

Scott Pearce's
Master Essay Method

Torts

TORTS APPROACH

Minimalist Approach

- I. How has the plaintiff been injured?
- II. Who is responsible for plaintiff's injury?
- III. What is the plaintiff's theory of liability?
- IV. What are defendant's defenses?
- V. Remedies

Elaborate Approach

- I. How has the plaintiff been injured? (Be specific.)
- II. Who is responsible for plaintiff's injury? (The charged defendant or somebody else?)
- III. What is plaintiff's theory (or theories) of liability?
 - A. Injuries to plaintiff's person
 1. Assault
 2. Battery
 3. False Imprisonment
 - B. Injuries to plaintiff's property
 1. Trespass
 - a. Trespass to Land
 - b. Trespass to Chattels
 2. Conversion

- C. Injuries to Intangible Interests
 - 1. Intentional Infliction of Emotional Distress
 - 2. The Business Torts (Fraud and Interference)
 - 3. Defamation (Note: Constitutional law crossover - 1st Amendment defense)
 - a. Slander
 - b. Libel
 - c. 1st Amendment Defense
 - 4. Invasion of Privacy
 - a. Commercial Appropriation
 - b. False Light
 - c. Public Disclosure of Private Facts
 - d. Intrusion on Seclusion
- D. Strict Liability
- E. Negligence
- F. Nuisance (Public and Private)
- G. Products Liability
 - 1. Strict Liability
 - 2. Negligence
 - 3. Warranty
- IV. What are defendant's defenses?
 - A. Privilege
 - B. Contributory Negligence
 - C. Assumption of Risk

V. Remedies

A. Damages

1. Compensatory
2. Punitive

B. Restitution

3. Replevin (Claim and Delivery)
4. Constructive Trust
5. Equitable Lien

C. Equitable Relief (Temporary and Permanent Injunctions)

2. Inadequate Legal Remedy
3. Property Right
4. Feasibility
5. Balancing
6. Defenses

Torts

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Patty is in the business of transporting human organs for transplant in City. She is paid only upon timely delivery of a viable organ; the delay of an hour can make an organ nonviable.

David transports gasoline over long distances in a tank truck. Recently, he was hauling gasoline through City. As David was crossing a bridge in City, his truck skidded on an oily patch and became wedged across the roadway, blocking all traffic in both directions for two hours.

Patty was delivering a kidney and was on the bridge several cars behind David when the accident occurred. The traffic jam caused Patty to be two hours late in making her delivery and made the kidney nonviable. Consequently, she was not paid the \$1,000 fee she would otherwise have received.

Patty contacted Art, a lawyer, and told him that she wanted to sue David for the loss of her fee. “There isn’t a lot of money involved,” she said, “but I want to teach David a lesson. David can’t possibly afford the legal fees to defend this case, so maybe we can put him out of business.”

Art agreed and, concluding that he could not prove negligence against David, decided that the only plausible claim would be one based on strict liability for ultrahazardous activity. Art filed a suit based on that theory against David on behalf of Patty, seeking recovery of damages to cover the \$1,000 fee Patty lost. The facts recited in the first three paragraphs above appeared on the face of the complaint.

David filed a motion to dismiss. The court granted the motion on the grounds that the complaint failed to state a cause of action and that, in any event, the damages alleged were not recoverable. It entered judgment in David’s favor.

David then filed suit against Patty and Art for malicious prosecution.

1. Did the court correctly grant David’s motion to dismiss on the grounds stated? Discuss.
2. What is the likely outcome of David’s suit for malicious prosecution against Patty and Art? Discuss.

Torts – Outline of Issues
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- I. The court correctly granted David's motion to dismiss on the grounds stated.
 - A. Strict Liability
 - 1. Ultra-hazardous Activity
 - 2. Causation
 - 3. Damages
 - 4. Conclusion
 - B. Damages
 - C. Conclusion

- II. David's suit for malicious prosecution against Patty and Art is likely to succeed.
 - A. David won a final judgment on the merits.
 - B. Patty had a personal vendetta against David
 - C. Art had an ethical duty to exercise independent legal judgment
 - D. Conclusion

Torts

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ConsumerPro, a consumer protection group, published a manual listing the names, addresses, telephone numbers and specialties of attorneys who represent plaintiffs in tort cases. The manual also included comments rating the attorneys. The manual was distributed by ConsumerPro to its members to aid them in the selection of an attorney should they need one.

Paul was listed in the manual as an attorney who litigates automobile accident cases. In the related comments, the manual stated that “Paul is reputed to be an ambulance chaser and appears to handle only easy cases.

Paul sued ConsumerPro for defamation, alleging injury to reputation and requesting general damages. ConsumerPro moved to dismiss for failure to state a claim on which relief could be granted, on the grounds that (1) the statement was non-actionable opinion, (2) Paul failed to allege malice or negligence under the United States Constitution, (3) Paul failed to allege special damages, and (4) in any event, the statement was privileged under the common law.

How should the court rule on each ground of the motion to dismiss? Discuss.

Torts – Outline of Issues
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- I. ConsumerPro’s statement is non-actionable opinion
 - A. “Paul is reputed to be an ambulance chaser” – defamatory statement?
 - B. “...and appears to handle only easy cases” – probably non-defamatory even if false
 - C. Conclusion: Grant the defense motion. The statement is non-actionable opinion.

- II. Paul failed to allege negligence or malice
 - A. 1st Amendment: public figure / public concern
 - B. Conclusion: Defense prevails, but not a big win

- III. Paul failed to allege special damages
 - A. General damages are presumed (assuming facts state a claim for defamation)
 - B. Special damages must be pled to be recovered
 - C. Conclusion: Deny defense motion to dismiss on this ground

- IV. ConsumerPro’s statement was privileged at common law
 - A. Absolute privilege – applies to statements in court or legislature
 - B. Qualified privilege – protects non-malicious statements in the public interest
 - C. Conclusion: Grant the defense motion.

Torts

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After paying for his gasoline at Delta Gas, Paul decided to buy two 75-cent candy bars. The Delta Gas store clerk, Clerk, was talking on the telephone, so Paul tossed \$1.50 on the counter, pocketed the candy, and headed out. Clerk yelled, “Come back here, thief!” Paul said, “I paid. Look on the counter.” Clerk replied, “I’ve got your license number, and I’m going to call the cops.” Paul stopped. He did not want trouble with the police. Clerk told Paul to follow him into the back room to wait for Mark, the store manager, and Paul complied. Clerk closed, but did not lock, the only door to the windowless back room.

Clerk paged Mark, who arrived approximately 25 minutes later and found Paul unconscious in the back room as a result of carbon monoxide poisoning. Mark had been running the engine of his personal truck in the garage adjacent to the back room. When he left to run an errand, he closed the garage, forgot to shut off the engine, and highly toxic carbon monoxide from the exhaust of the running truck had leaked into the seldom used back room. Mark attributed his forgetfulness to his medication, which is known to impair memory.

Paul survived but continues to suffer headaches as a result of the carbon monoxide poisoning. He recalls that, while in the back room, he heard a running engine and felt ill before passing out.

A statute provides, “No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key from the ignition, setting the brake thereon and , when standing upon any perceptible grade, turning the front wheels to the curb or side of the highway.”

1. Can Paul maintain tort claims against (a) Clerk for false imprisonment and (b) mark for negligence? Discuss.
2. Is Delta Gas liable for the acts of (a) Clerk and (b) Mark? Discuss.

Torts – Outline of Issues
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- I. Paul v. Clerk - False Imprisonment
 - A. Intentional Confinement
 - B. Bounded Area
 - C. Defense: Shopkeeper's Privilege
 - D. Conclusion

- II. Paul v. Mark - Negligence
 - A. Duty
 - B. Breach - Negligence Per Se
 - C. Causation
 - D. Damages
 - E. Defenses
 - F. Conclusion

- III. Paul v. Delta Gas
 - A. Vicarious Liability
 - B. Liability for Clerk's Acts
 - C. Liability for Mark's Acts
 - D. Defenses
 - E. Conclusion

Torts

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Jack owned the world's largest uncut diamond, the "Star," worth \$1 million uncut, but \$3 million if cut into finished gems. Of the 20 master diamond cutters in the world 19 declined to undertake the task because of the degree of difficulty. One mistake would shatter the Star into worthless fragments.

One master diamond cutter, Chip, studied the Star and agreed with Jack in writing to cut the Star for \$100,000, payable upon successful completion. As Chip was crossing the street to enter Jack's premises to cut the Star, Chip was knocked down by a slow moving car driven by Wilbur. Wilbur had driven through a red light and did not see Chip, who was crossing with the light. Chip suffered a gash on his leg, which bled profusely. Though an ordinary person would have recovered easily, Chip was a hemophiliac (uncontrollable bleeder) and died as a result of the injury. Chip left a widow, Melinda.

Jack, who still has the uncut Star, engaged Lawyer to sue Wilbur in negligence for the \$2 million difference between the value of the diamond as cut and as uncut. Lawyer allowed the applicable statute of limitations to expire without filing suit.

1. What claims, if any, may Melinda assert against Wilbur, and what damages, if any, may she recover? Discuss.
2. What claims, if any, may Jack assert against Lawyer, and what damages, if any, may he recover? Discuss.

Torts – Outline of Issues
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- I. Melinda v. Wilbur
 - A. Negligence
 - 1. Duty
 - 2. Breach
 - 3. Causation
 - 4. Damages
 - 5. Defenses
 - 6. Conclusion
 - B. Wrongful Death
 - C. Conclusion

- II. Jack v. Lawyer
 - A. Professional Malpractice
 - 1. Duty
 - 2. Breach
 - 3. Causation
 - 4. Damages - Case Within a Case
 - 5. Defenses
 - B. Conclusion

TORTS

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Paula is the president and Stan is the secretary of a labor union that was involved in a bitter and highly-publicized labor dispute with City and Mayor. An unknown person surreptitiously recorded a conversation between Paula and Stan, which took place in the corner booth of a coffee shop during a break in the contract negotiations with City. During the conversation, Paula whispered to Stan, “Mayor is a crook who voted against allowing us to build our new union headquarters because we wouldn’t pay him off.”

The unknown person anonymously sent the recorded conversation to KXYZ radio station in City. Knowing that the conversation has been surreptitiously recorded, KXYZ broadcast the conversation immediately after it received the tape.

After the broadcast, Paula sued KXYZ for invasion of privacy in publishing her conversation with Stan. Mayor sued Paula and KXYZ for defamation.

1. Is Paula likely to succeed in her suit against KXYZ? Discuss.
2. Is Mayor likely to succeed in his suit against Paula and KXYZ? Discuss.

TORTS
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Outline

- I. Paula v. KXYZ
 - A. Invasion of Privacy
 - 1. Public Disclosure of Private Facts
 - 2. Intrusion Into Seclusion
 - 3. Commercial Appropriation
 - B. Defenses of KXYZ
 - C. Conclusion - No Liability

- II. Mayor v. Paula
 - A. Defamation
 - B. Paula's Defenses
 - C. Conclusion

- III. Mayor v. KXYZ
 - A. Defamation
 - B. Defenses of KXYZ
 - C. Conclusion: No Liability

TORTS
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Answer

I. Paula v. KXYZ

Paula is the president of a labor union. KXYZ is a local radio station in City. The radio station broadcast a tape recording of a private conversation between Paula and Stan, the secretary of the union. This recording was made surreptitiously by an anonymous third party and sent to KXYZ. Paula has sued KXYZ for Invasion of Privacy. If successful, she will win compensatory and punitive damages.

A. Invasion of Privacy

Invasion of Privacy is an umbrella for three different theories of liability, each of which is considered a type of invasion of privacy.

1. Public Disclosure of Private Facts

Paula intended for her conversation with Stan to remain private. She even whispered the key statement to Stan about Mayor being “a crook.” The anonymous person obviously had to use a sensitive microphone to secretly record the conversation between Paula and Stan. By broadcasting the tape, KXYZ has published this private conversation to its audience, disclosing these private facts to the general public.

2. Intrusion Into Seclusion

Tort law recognizes that individuals have a right to be left alone. It is considered unreasonable to intrude into the private space of others. The anonymous person who recorded Paula’s conversation with Stan intruded into her seclusion and invaded her privacy. KXYZ chose to take advantage of this misconduct by broadcasting the resulting tape recording.

3. Commercial Appropriation

Assuming KXYZ, like most radio stations, probably is a commercial media outlet, the station commercially profited from its appropriation of their voices. Public radio stations have corporate sponsors, too; even if KXYZ was a public radio station it is conceivable that their unlicensed broadcast of Paula’s conversation might be considered a commercial appropriation.

B. Defenses of KXYZ

The radio station's first defense is based on the First Amendment to the US Constitution. Paula and Stan's union was involved in a bitter and highly-publicized labor dispute with City and Mayor. All of the individuals involved, Paula, Stan and Mayor, are likely to be deemed public figures. Plus, the secretly taped conversation is a matter of public concern, not the sort of private information that typically is protected by invasion of privacy law.

Paula and Stan's conversation took place in the corner booth of a coffee shop, which is a public place. Paula had to foresee the possibility of eavesdroppers listening in on her conversation with Stan, particularly since, as a union president, she is known to the general public.

Although KXYZ may have been able to attract publicity and command a higher price for their commercial time as a result of their publicizing the conversation between Paula and Stan, these circumstances are different from those typically associated with commercial appropriation. It is not as if the radio station used their images or voices as part of an advertising campaign.

Finally, KXYZ did not itself record Paula and Stan's conversation. The radio station did not commit the tortious act of making the recording, it merely broadcast it after receiving the tape anonymously.

C. Conclusion

Paula is unlikely to succeed in her suit against KXYZ. The radio station was fulfilling its obligation to report the news when it broadcast the tape of Paula and Stan's conversation. Both the conversation and the parties involved are of public interest. Paula's invasion of privacy claims are not strong.

II. Mayor v. Paula

After the radio station broadcast the conversation between Paula and Stan, Mayor sued Paula for defamation. He seeks compensatory and punitive damages.

A. Defamation

For Mayor's lawsuit against Paula to succeed, he will have to establish that she made a defamatory statement, published to a third party, and causing damages. In the tape recorded conversation, Paula whispered to Stan, "Mayor is a crook who voted against allowing us to build our new union headquarters because we wouldn't pay him off." This would be slander, a spoken defamation.

Accusing someone of being "a crook" would be considered defamation per se, because it accuses the victim of moral turpitude. Damages would be presumed. Paula's act of whispering the statement to Stan would constitute publication to a third party.

B. Paula's Defenses

Truth is a valid defense to defamation. If, in fact, Mayor had demanded a payoff before he would vote in favor of construction of a new union headquarters, he would not be able to pursue Paula for damages based on defamation. It is apparent that Paula is making a very specific allegation, as opposed to merely expressing a harsh, critical opinion of Mayor.

C. Conclusion

If Paula's allegation is true, Mayor's suit against Paula will fail. If Paula's statement is false, Mayor's suit is likely to succeed, and Mayor will be entitled to compensatory and punitive damages.

III. Mayor v. KXYZ

A. Defamation

As discussed above, defamation requires a defamatory statement published to a third party and causing damages. Although KXYZ did not make the allegedly defamatory statement, it caused the statement to be broadcast throughout City.

B. Defenses of KXYZ

If Paula's allegations are true, her statement would not be defamatory and KXYZ could not be liable to Mayor for defamation.

Even if Paula's statement is judged to be slander per se, KXYZ has a valid First Amendment defense to Mayor's lawsuit for defamation. Mayor is a public figure. Paula's comment is a matter of public concern. Accordingly, Mayor's defamation action would have to meet the *Sullivan v. NY Times* standard. KXYZ did not knowingly publish a false statement with malice or with reckless disregard of truth or falsehood.

C. Conclusion: No Liability

Mayor's suit against KXYZ is likely to fail. The radio station has a solid First Amendment defense to defamation, even if Paula's allegation proves to be false.

TORTS - REMEDIES
Copyright July 2002 State Bar of California

Manufacturer (Mfr.) advertised prescription allergy pills produced by it as “the modern, safe means of controlling allergy symptoms.” Although Mfr. knew there was a remote risk of permanent loss of eyesight associated with use of the pills, Mfr. did not issue any warnings. Sally saw the advertisement and asked her doctor (Doc) to prescribe the pills for her, which he did.

As a result of taking the pills, Sally suffered a substantial loss of eyesight, and a potential for a complete loss of eyesight. Sally had not been warned of these risks, and would not have taken the pills if she had been so warned. Doc says he knew of the risk of eyesight loss from taking the pills but prescribed them anyway because “this pill is the best-known method of controlling allergy symptoms.”

Bud, Sally’s brother, informed Sally that he would donate the cornea of one of his eyes to her. Bud had excellent eyesight and was a compatible donor for Sally. This donation probably would have restored excellent eyesight to one of Sally’s eyes with minimal risk to her. The expenses associated with the donation and transplantation would have been paid by Sally’s medical insurance company. Sally, however, was fearful of undergoing surgery and refused to have it done. Thereafter, Sally completely lost eyesight in both of her eyes.

Sally filed a products liability suit against Mfr. seeking to recover damages for loss of her eyesight. She also filed a suit for damages against Doc for negligence in prescribing the pills.

What must Sally prove to make a prima facie case in each suit, what defenses might Mfr. and Doc each raise, and what is the likely outcome of each suit? Discuss.

TORTS - REMEDIES
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Outline

- I. Sally v. Manufacturer - Products Liability Theories
 - A. Strict Products Liability
 - 1. Defect: failure to warn about the risk of sight loss.
 - 2. Causation
 - 3. Damages
 - 4. Conclusion: Manufacturer is strictly liable.
 - B. Negligence
 - 1. Duty
 - 2. Breach
 - 3. Causation - Actual and Proximate
 - 4. Damages
 - 5. Defenses
 - 6. Conclusion: Manufacturer is liable for negligence.
 - C. Warranty
 - D. Sally's Duty to Mitigate
 - E. Conclusion: Sally prevails.
- II. Sally v. Doc for Negligence
 - A. Duty
 - B. Breach
 - C. Causation - Actual and Proximate
 - D. Damages
 - E. Defenses
 - F. Conclusion: Sally prevails.

TORTS - PROFESSIONAL RESPONSIBILITY
Copyright February, 2000 - State Bar of California

Lee, who had been a party in a bench trial before Judge Bright, was dissatisfied with the outcome of the case. After the trial was concluded, Lee held a press conference and told Reporter:

Judge Bright is a very unfair judge. In a recent trial in which I was involved in his court, he clearly didn't understand what was going on. I've heard he's often drunk on the bench.

These remarks were published verbatim in the local newspaper. Judge Bright lost his bid for reelection. Judge Bright sued Lee and Reporter for defamation, alleging that he lost the election as a result of the publication of Lee's remarks. Both defendants moved to dismiss on the ground that the complaint failed to state a cause of action for defamation. The court denied the motion.

Attorney offered to act as a consultant to Lee and Reporter. He agreed to advise them on law and strategy and to help them prepare their case and obtain expert witnesses. He also offered to be an expert witness, but said he would not be their lawyer in the actual trial. Lee and Reporter agreed to hire Attorney and to pay him for his services, both as a consultant and as an expert witness, a contingency fee based on the outcome of the case.

At the trial the court ruled (a) that Lee's statements about Judge Bright were not defamatory; (b) that, in any event, both Lee's statements and Reporter's publication of the statement were privileged; and (c) that, as a matter of law, Judge Bright did not suffer any damage.

1. Were each of the trial court's rulings correct? Discuss.

2. What, if any, ethical issues arise as a result of the terms under which Attorney undertook to assist Lee and Reporter? Discuss.

TORTS - PROFESSIONAL RESPONSIBILITY

Outline

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- I. The court's rulings on Lee's statements about Judge Bright:
 - A. "Judge Bright is a very unfair judge."
 - B. "...he clearly didn't understand what was going on."
 - C. "I've heard he's often drunk on the bench."

- II. The court's ruling that both Lee's statements and Reporter's publication of the statement were privileged:
 - A. Lee's statements
 - B. Reporter's publication

- III. The court's ruling that, as a matter of law, Judge Bright did not suffer any damage:

- IV. Ethical issues arising out of the terms under which Attorney undertook to represent Lee and Reporter:
 - A. Attorney would act as a consultant.
 - B. Attorney would be an expert witness but not trial lawyer.
 - C. Attorney would be paid on a contingent basis.
 - D. Conclusion

TORTS

Copyright July 1998 State Bar of California

Transco, a common carrier, hauls toxic chemicals by train through an area where Paul operates a commercial greenhouse. Concerned about the risks if there were spillage from one of the box cars containing the chemicals, Transco hired Diana, a consultant, to assess that risk. Diana concluded there was little or no risk to nearby property owners if any such spillage occurred, and she so advised Transco.

Thereafter, one of Transco's trains containing a known toxic chemical derailed because the train engineer suffered a heart attack while operating the engine. The engineer was obese and, five years earlier, had taken a leave of absence because of a mild heart attack he had suffered. The derailment caused chemical spillage near Paul's property, and Paul closed his greenhouse business out of fear that this spillage would damage his greenhouse plants and cause him to get cancer. In fact, no lasting damage resulted from the spill.

Six months after the accident, Paul moved back into his previously vacated premises and began operating the greenhouse again. Paul's fear for his health from possible exposure to the chemical continued, however, and subsequently he suffered severe anxiety and depression because of this fear.

On what theory or theories, if any, can Paul recover damages from, and what defenses may reasonably be raised by:

- a. Transco? Discuss.
- b. Diana? Discuss.

TORTS
Copyright July 1998 Scott F. Pearce, Esq.
Outline

- I. Paul v. Transco
 - A. Strict Liability
 - 1. Ultrahazardous Activity
 - 2. Causation
 - 3. Damages
 - 4. Defenses
 - 5. Conclusion
 - B. Negligence
 - 1. Duty
 - 2. Breach
 - 3. Causation
 - 4. Damages
 - 5. Defenses
 - 6. Conclusion
 - C. Negligent Hiring of Diana
 - D. Negligent Infliction of Emotional Distress
 - E. Nuisance
 - F. Conclusion: Transco is strictly liable
- II. Paul v. Diana - Negligence
 - A. Duty
 - B. Breach
 - C. Causation
 - D. Damages
 - E. Defenses
 - F. Conclusion: Diana is not liable

TORTS
Copyright February 1997 - State Bar of California

Peters, a suburban homeowner, decided to resurface with bricks the concrete area surrounding his pool. He purchased from Homeco, a local home improvement store, a concrete cutter manufactured by Conco, which had a blade manufactured by Bladeco. He then took the concrete cutter home and assembled it following the instructions provided by Conco.

The blade that Peters purchased was clearly labeled “Wet.” Although no instructions or warnings came with the blade, Conco included several warnings throughout the instructions to the concrete cutter stating, “If using a wet blade, frequently water the blade and surface being cut to avoid risk of blade degradation.” No other warnings relating to the blade were included with the concrete cutter.

Peters began cutting the concrete with the concrete cutter without using water. Less than five minutes into the job he noticed that the cutter was vibrating excessively. He turned the machine off by hitting the “kill switch” located near the blade at the bottom of the cutter, with his right foot. The cutter’s handle did not have a “kill switch.” After carefully examining the concrete cutter and blade, Peters became convinced that nothing was wrong and continued to operate it. Nevertheless, within seconds, the concrete cutter again began vibrating violently.

As Peters reached with his right foot to hit the “kill switch” again, the blade broke into pieces, forced off the cutter’s safety guard, spiraled into Peter’s right foot and caused permanent injuries.

On what theory or theories might Peters recover damages from and what defenses may reasonably be raised by:

1. Conco? Discuss.
2. Bladeco? Discuss.
3. Homeco? Discuss.

TORTS
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Outline

- I. Peters v. Conco: Products Liability
 - A. Strict Liability
 - 1. Design or Manufacturing Defect
 - 2. Inadequate Warning
 - 3. Damages
 - 4. Defenses
 - B. Negligence
 - 1. Duty
 - 2. Breach
 - 3. Causation
 - 4. Damages
 - 5. Defenses
 - a. Contributory or Comparative Negligence
 - b. Assumption of Risk
 - C. Warranty
 - D. Conclusion
- II. Peters v. Bladeco
 - A. Strict Liability
 - B. Negligence
 - C. Warranty
 - D. Defenses
 - E. Conclusion
- III. Peters v. Homeco
 - A. Strict Liability
 - B. Negligence
 - C. Warranty
 - D. Defenses
 - E. Conclusion

TORTS

Copyright July 1995 - State Bar of California

Booker is the owner of The Bookstore. Walker, a clerical worker in a nearby office, came into the Bookstore every day at lunchtime to browse. Booker became annoyed because Walker read books and magazines but never bought anything. Finally, Booker told Walker that he would call the police if Walker came into the store again.

Walker returned the next day, and Booker called the police. Booker made a citizen's arrest of Walker for violation of the local vagrancy ordinance that made it a misdemeanor to "loiter in an annoying fashion in any place open to the public." Walker objected loudly to the arrest, yelling, "You can't arrest me, I didn't take anything."

Reporter overheard Walker's remarks. Reporter worked for The News, the local newspaper, and recognized Walker because one year earlier Walker had led a movement to remove certain books from the local high school library. Reporter thought that the police were arresting Walker for shoplifting and rushed back to the paper to file a story on the arrest.

The next day, The News reported that Walker had been arrested for shoplifting, in a story headlined: "Book Burner Arrested for Book Theft."

Walker was charged with vagrancy. The charge was dismissed on the ground that the vagrancy ordinance had long been constructed to require actual disturbance of the peace, and in this case there was no actual disturbance.

1. What claims, if any, does Walker have against Booker? Discuss.
2. What claims, if any, does Walker have against The News? Discuss.

TORTS
Copyright July 1995 - Scott F. Pearce
Outline

- I. Walker v. Booker
 - A. False Imprisonment
 - 1. Booker made a citizen's arrest of Walker for vagrancy.
 - 2. The vagrancy charges were dismissed.
 - 3. Conclusion: Booker is liable.
 - B. Malicious Prosecution
 - C. Intentional Infliction of Emotional Distress
 - D. Walker's claims against Booker for the actions of The News will fail.

- II. Walker v. The News
 - A. Defamation
 - 1. Libel Per Se
 - 2. Walker was at least a limited public figure.
 - 3. Conclusion
 - B. False Light
 - C. Intentional Infliction of Emotional Distress

TORTS

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Dina, aged sixteen, lives at home with her mother, Mary, in a state where the age of majority is eighteen. Mary is aware that Dina has recently exhibited a sometimes violent and delusionary nature diagnosed as schizophrenia and has attacked persons in the neighborhood. Medication that can control Dina's behavior has been prescribed, but without Mary's knowledge, Dina has stopped taking it.

A week after Dina stopped taking her medication, she approached a neighbor, Paul, as he walked along the sidewalk fronting Mary's home. When she was face to face with Paul, Dina, without provocation, gestured threateningly and screamed, "I know you're out to get me and I'm going to get you first," and then strode away.

Paul, who had no knowledge of Dina's mental illness, phoned Mary about the incident. Mary told Paul that "Dina has sometimes made threats to others, but I do not think she will try to hurt you and I assure you that this will not happen again." Paul believed Mary's assurances and, for that reason, did not seek to avoid Dina.

Mary questioned Dina about the incident, scolded her, and asked if Dina was taking her medication. When Dina said she was, Mary did not pursue the matter.

Two days after Dina confronted Paul, Dina saw him raking leaves which had fallen into the street fronting their adjoining homes. Dina got on her bicycle and rode it as rapidly as she could directly at Paul. Although Dina swerved away from Paul at the last moment, Paul reacted by diving to one side. He struck his head on the curb and suffered a severe concussion and facial injuries.

Paul has sued Dina and Mary, alleging tortious causes of action.

1. Is Paul entitled to recover against Dina for:
 - a. Assault? Discuss
 - b. Battery? Discuss.

2. Is Paul entitled to recover against Mary:
 - a. On the ground that Mary was negligent as to Paul? Discuss.
 - b. On the ground that Mary is vicariously liable for Dina's conduct? Discuss.

TORTS
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Outline

- I. Is Paul entitled to recover against Dina for Assault?
 - A. Dina's face to face threat:
 - B. Dina's bicycle ride:
 - C. Conclusion

- II. Is Paul entitled to recover against Dina for Battery?
 - A. Intent:
 - B. Causation:
 - C. Conclusion

- III. Is Paul entitled to recover against Mary for Negligence?
 - A. Duty:
 - B. Breach:
 - C. Causation:
 - D. Damages:
 - E. Defenses:
 - F. Conclusion

- IV. Is Mary vicariously liable to Paul for Dina's conduct?