

Sample Answer: Hypothetical No. One¹

Peter v. Able -Negligence

In order to prevail in a cause of action for negligence against Able, Peter must show that Able (1) had a duty of care towards Peter, (2) breached that duty, (3) which caused (factually and legally) Peter's (4) injuries.

Duty

The most basic rule of duty in negligence cases is that everyone has a duty to avoid exposing others to unreasonable risk of harm. This analysis has been somewhat refined by justices Andrews and Cardozo, in their opinions in *Palsgraf*. Cardozo would hold that Able only has a duty to Peter if Peter is in the "zone of danger." That is, if he was a reasonably foreseeable plaintiff. Andrews would hold that, because Peter was injured by Able's conduct, he was in the "zone of danger," creating a duty to Peter.

It seems that Able, as a medical student, should have been able to foresee that injecting people with narcotics would cause erratic behavior, thus necessitating rescue by a person nearby (such as a neighbor). Furthermore, under the rescue doctrine, a negligent tortfeasor who creates a condition necessitating rescue owes a duty of care to anyone who undertakes such a rescue. Because Able's conduct set the unfortunate chain of events in motion, it can be said that Able created the need to rescue. Therefore, Able owed a duty to Peter, under the Cardozo and Andrews tests, and the rescue doctrine.

Social hosts who provide their guests with drugs also have a duty of care to the people who might be injured when the guests, under the influence of the drugs provided, act unreasonably. This also creates a duty in Able to Peter.

Breach

In determining if a duty has been breached, the appropriate standard of care to be applied must be determined. The basic standard of care applied is that of the "reasonably prudent person." This is said to be an objective standard, determined by notions of common sense, and community standards.

Able illegally obtained narcotics. As a medical student, he should have been aware of their effects. It can be said that no reasonable person would inject his classmates with narcotics. Here, the burden of preventing the harm was slight. ... A ... had a huge party [where Able administered] uncontrollable and illegal narcotics Although it was not clearly foreseeable that the magnitude of the harm would be as great as it was, it was foreseeable that there might be some harm to any of the partygoers or even to himself. Therefore, P would likely be able to show that there was a breach of duty, and that A's conduct fell below the standard of care.

¹ Composite of two student essays with minor edits by Professor.

P may also state a claim for negligence per se. To determine breach, plaintiffs are allowed to bring forth evidence of an existing statute that was breached, and if the court allows it, the statute is then substituted for the standard of care. In order to state a cause of action for negligence per se, P must show that the statute was passed to protect the types of victim who were harmed and to protect against the type of harm that was suffered. The court here has complete discretion to decide if it should adopt the statute as the standard of care.

Here, there is the existence of ... a statute. Although we do not know the exact content of the statute, the facts tell us that the narcotics are ... only made legally available by prescription for a medical reason. It is likely that this law was passed to prevent the narcotics from being illegally obtained and used by others for a nonlegitimate reason such as recreational use. Because A had obtained the drugs illegally, and used them in a manner inconsistent with what they are for, it is likely that his conduct did cause harm to the people and of the type that were intended to be protected by passage of this law. Therefore, P would likely be able to state a cause of action for negligence per se, and the court would likely exercise its discretion to substitute the statute for the standard of care.

Cause

Factual causation

The basic test for cause-in fact is the "but for" test. If it can be shown that but for Able's conduct, Peter would not have been injured, Able's conduct is the factual cause of Peter's injuries.

If Able had not negligently given narcotics to the guests at the party, Baker would not have started a fire, Charlie would not have shot Peter, and Dana would not have attempted to perform her maneuver. However, removing anyone of those factors would have reduced or eliminated the harm suffered by Peter. Therefore, it can be said that Able was among several "but for" causes of Peter's injuries. In other words, he was a necessary but insufficient cause. Under either the second or third restatement of torts, this is sufficient to establish factual causation.

Proximate [or legal] causation

Conduct is said to be the proximate cause if the harm was foreseeable and there was no superseding causes. The type of harm and magnitude of harm need not be foreseeable, only that there would be some kind of resulting harm. An intervening cause is said to be superseding under the R2d if it was ... so extraordinary that it overtakes the initial [cause.] Under the R3d, the question asked is merely whether the intervening cause was within the scope of [the risk created], meaning that it [too] was a foreseeable risk.

Under either of these tests, because A could easily foresee that there would be some harm, whether it be an allergic reaction to the drugs, a battery because of the hallucinations, etc. [The] type of harm [which] occur[red] was not so unforeseeable that [A's conduct] cannot be said to [have been a] proximate cause. By giving narcotics to party guests, Able could have reasonably foreseen that they would behaved erratically. It does not seem terribly unreasonable that a person, delusional due to narcotics abuse, would start a fire.

Further, it is not unreasonable to expect Able to foresee that the fire would be seen by a neighbor, necessitating an attempted rescue. Because Able should have foreseen that the narcotics would make his guests behave erratically, he can be reasonably expected to foresee virtually any injuries that would result from such erratic behavior, even if he cannot foresee the exact manner in which they would occur. Because proximate cause is largely a policy judgment, and that courts are increasingly willing to find social hosts liable for the conduct of their guests when they provide their guests with intoxicants, public policy likely favors a finding of proximate cause.

Able may argue that there were intervening forces which cut off the chain of causation between his conduct and Peter's injuries. ... For an intervening cause to supersede the actor's conduct, and relieve him of liability [however,] the defendant must show that the cause was extremely improbable and unforeseeable, and [usually] independent of his own conduct. It's true that Baker, Charlie, and Dana were intervening causes in Peter's injuries, but all such causes stemmed directly for Able's negligent conduct (providing them with illegal drugs), and the subsequent negligence of third parties is usually held to be reasonably foreseeable, anyway. Therefore, Able was the proximate cause of Peter's injuries.

The acts of Baker, Charlie, and [D], although intervening causes, would likely not reach the status of superseding to relieve A from [liability for] harm because these acts were not so extraordinary of what people on drugs do when they hallucinate and are tripping. Therefore, P would likely be able to show that A's conduct was the proximate cause of the harm.

Damages

In order to state a cause of action for negligence, P must also show that there was some legally cognizable damages. This usually means physical harm. Because P suffered physical harm for which medical treatment was needed, and now has a permanent limp and scarring, he would likely be able to claim both economic and non-economic damages.

As to any indivisible damages there will be joint and several liability among the various tortfeasors. As to divisible damages ..., each party will have to pay only for the part of the harm that he or she caused. [see, below]

Defenses of A

First, A may ... try to claim contributory negligence of P, which under the traditional common law would have been a complete bar to recovery, but because the facts do not indicate that P breached the standard of care, this defense would not likely hold up. ... P may ... claim private necessity, because even though he was trespassing, he was doing so to prevent an even greater harm, possibly death of those inside. ...

[Moreover, a rescuer, under these emergency circumstances, may be found to have acted reasonably in breaking down the door and rushing in when no answer was received, although this point is debatable. At common law, "reasonable" assumption of the risk would be no defense to a claim brought by a rescuer. In a jurisdiction that follows the rule of comparative fault, P might be found at least in part responsible for P's own injuries, which would reduce P's recovery by that proportion.]

A may also [claim that A's liability should be limited to A's share of the overall responsibility for P's injuries.] [In comparative fault jurisdiction] when there are concurrent tortfeasors, the liability is apportioned according to percentage of fault determined by the [trier of fact]. Because ... [B, C, and D] contributed to the total harm, this [may be] a strong defense. Under CA law, if A was able to show that [B, C and D] also [were] at fault, A would be only severally liable for any non-economic damages, and joint and severally liable for economic damages. ...

Peter v. Baker -Negligence

Duty

[U]nder the Andrews test [or] Cardozo test [described above] ..., Able had a duty to Peter. ... Baker would likely also have a duty to Peter, since, by starting the fire, he necessitated a rescue, which creates a duty in him towards any rescuer. ... [A] rescuer is a foreseeable plaintiff, under the rescue doctrine. Therefore, Baker had a duty to Peter.

Breach

It must be shown that Baker breached his duty of care to Peter. In his case, the "reasonable person" standard would apply. It seems that there are no circumstances under which a reasonable person would attempt to turn charcoal into gold by setting it on fire.

[B's] acts in mixing chemicals and lighting the fire show that B did not act as a reasonably prudent person would in same or similar circumstances, and the burden of avoiding the risk was slight in comparison with the magnitude of the risk and probability that a fire would cause harm. Thus, P would be able to show that there was a breach of the standard of care.

Voluntary intoxication does not alter the standard of care, especially since Baker was a longtime user of narcotics, and probably aware of their effects. Therefore, Baker fell below the reasonable person standard of care, and breached his duty to Peter.

Causation

Factual causation

As mentioned above, there are multiple ... causes of Peter's injuries. Each of these causes can be said to be a "but for" cause, and, therefore, a substantial factor, and therefore a factual cause. If Baker had not lit the charcoal on fire, Peter would not have felt a need to rescue the people in the house, and he would not have suffered his injuries. [Thus, it can be concluded that Baker was a factual cause of Peter's injuries, even if Baker did not shoot or burn Peter.]

Proximate [or legal] causation

There must also be legal causation. ... Here, [it was foreseeable that starting] a fire in an uncontrolled area would likely cause harm However, B would likely claim that the intervening causes of C and D were superseding. ...

This argument is stronger than in the preceding analysis, because that setting a fire would cause someone to come into the house, be attacked and burned by another individual seems somewhat remote. However, danger invites rescue, and that someone would attempt to save them inside the house is not so extraordinary, nor is it extraordinary that they would be injured in the process.

The manner in which the injuries occur and the extent of harm are irrelevant, and need not be foreseeable. From this, it follows that Baker could reasonably have foreseen Peter's injuries, as well. By starting the fire, he should have known that somebody would attempt a rescue, and that the rescuer would be exposed to a room filled with narcotics users, who may well be delirious. ...

Because the type of harm suffered does not have to be foreseeable, only that there was harm, P would likely be able to show that B's acts were a proximate cause of the injury.

Defenses of B

B may try to raise the defense of [P's comparative responsibility], as A did above.

If it was determined that A and B were jointly responsible for the harm suffered, then [the finder of fact] may decide to apportion [their] fault. CA has adopted a system of comparative responsibility, whereby fault and damages for an indivisible injury is usually apportioned according to share of liability, if it can be determined.

Therefore, I conclude that Baker, along with Able, is liable for Peter's injuries.

Damages

For a plaintiff to recover for negligence, there must be a legally cognizable harm to the plaintiff. [Peter's injuries have been established above.]

Peter v. Charlie

P would likely try to state causes of action for both battery and assault against C.

Battery

To prevail in a cause of action for battery, Peter must show that Dana (1) intentionally (2) caused (3) a harmful or offensive contact with the person of Peter.

Intent

To show intent on the part of the defendant, the plaintiff must show that the defendant acted with the purpose of causing the harm, or with substantial certainty that his conduct would harm the plaintiff. Charlie thought that Peter was an intruder, and shot at Peter, with the purpose of hitting him.

Causation

But for Charlie shooting Peter, Peter's ... injury would not have occurred.

Harmful or offensive contact

To cause a harmful or offensive contact with the person of another, there need [not] be direct physical touching between the plaintiff and defendant. Simply causing a harmful or offensive contact between the person of another and some physical object is usually sufficient.

Therefore, shooting Peter in the leg clearly meets all of the elements of battery.

I conclude that Charlie committed battery against Peter.

Assault

To show assault, P must show that C (1) intentionally (2) caused (3) a reasonable apprehension of an imminent harmful or offensive contact [with the person of Peter].

[If Peter saw Charlie pointing the gun before Charlie fired, then Peter would likely have reasonably apprehended an imminent harmful or offensive contact, and, for the reasons set forth above with respect to battery, the other elements of an assault (intent, etc.) would thereby be established.]

Charlie's Defenses

Charlie will likely argue that he was acting in self defense. Self defense is an affirmative defense It requires that the defendant use reasonable force, and have at least a reasonable belief that the plaintiff [was an imminent] threat [to him.]

In this case, Charlie was suddenly awoken by the sound of a shattering door, to a smoke-filled room. It seems that, although he was mistaken, he had a good reason to believe that Peter was a threat to his physical safety. He had no way of knowing that Baker started the fire, and that Peter was trying to rescue the people in the house.

There is usually a duty to retreat, if possible, before using deadly force (force calculated to cause death or serious injury -shooting a person, for example). The exception is when one is in one's own home. However, Charlie was not in Charlie's home. Furthermore, the fact that he was able to run away immediately after shooting Peter indicates that he could have safely retreated before shooting him.

[C might argue the defense of A, which generally would require that A would have had the right to use deadly force. The factors considered above might apply more favorably if asserted by A.]

[Finally] for defense of property, although some states have now begun to allow deadly force against an intruder [in circumstances like these], the traditional rule is that you ... were warranted in using a reasonable amount of force, but not deadly force. ...

Damages

Charlie, as a joint tortfeasor, along with Baker and Able, is jointly and severally liable for the physical injuries he caused. Therefore, he can be made to pay the full judgment.

Peter v. Dana - Battery

To prevail in a cause of action for battery, Peter must show that Dana (1) intentionally (2) caused (3) a harmful or offensive contact with the person of Peter, and that such contact was not consensual.

Intent

Dana thought she was helping Peter by performing the "Dana Maneuver." It is clear that she acted with the purpose of causing physical contact with the person of another. The fact that she did not likely intend to cause the specific injuries do not negate the intent element of battery.

Harmful/offensive contact

Dana's contact with the person of Peter caused a severe burn, which any person would regard as both harmful and offensive. Peter was unconscious, and therefore did not expressly consent to be touched by Dana.

Therefore, I conclude that Dana's conduct met the elements of battery.

Defenses

[Implied] consent:

Dana may argue that the court should impute consent to Peter, even though he was unconscious. Courts will sometimes impute consent to unconscious persons in an emergency situation, based on the policy of encouraging people with special skills to help others. The rationale is that any reasonable person would consent to such contact if he were so able.

However, Dana was not a medical doctor, and the facts indicate that the "Dana Maneuver" was not a recognized treatment by any medical professional. Furthermore, no reasonable person would consent to "treatment" from a medical student in a narcotics-induced daze who indicated that she would "treat" a bullet wound by setting it on fire.

Therefore, Dana's defense of consent will not prevail.

Damages

[T]he only injury that Dana directly caused was the burn to Peter's leg. This injury is easily divisible from Peter's other physical injury (the bullet wound). Therefore, Dana is only liable for the incremental increase in harm that she caused. She will have to pay the medical expenses associated with treating Peter's burned leg.

If Peter's damages for pain and suffering are found to be indivisible, she will have to pay for [her proportionate share], to the extent that the finder of fact determines her to be culpable, since there is no joint and several liability for non-economic damages in California.

Peter v. Dana – Negligence

Under rules stated above, P could also sue [D] for negligence. Although there is no duty to rescue, when one attempts a rescue, they assume the duty and are held to a reasonably prudent person standard thereafter. Burning him with charcoal is not acting as RPP would, and so there was breach. D acts were the factual and proximate cause because but for the application of charcoal, he would not have been burned, and that applying the burning charcoal would foreseeably cause harm. There was resulting damages and scarring, so P would likely be able to recover.

Apportionment of Responsibility

[A] tortfeasor [may be] ... liable for subsequent aggravation of the injuries he causes, [even] if the total harm is divisible. [Here, if the subsequent aggravation by D of the injury inflicted by C was “foreseeable” and not so extraordinary as to justify relieving C of liability therefor, then C will be liable for the injury inflicted by D.] [Thus,] Charlie [could be held] liable for the wounds Peter sustained when he was shot (inability to walk, permanent limp) [and] for the separate injuries (burn, scarring) sustained during the "Dana Maneuver" as well, even if such separate injuries are easily divisible.

[For the same reason, if liable at all, A and B may be liable for the entirety of the harm.]

[As for Dana, however], the separate injuries (burn, scarring) sustained during the "Dana Maneuver" ... are easily divisible [and Dana likely will not be held responsible for injuries caused by A, B and C.]

The damages for pain and suffering may be indivisible, which would subject [all liable actors] to joint and several liability for those damages in many jurisdictions.

However, in California, where this incident took place, comparative fault is used to calculate [responsibility]. Therefore, the finder of fact will have to determine the percentage of culpability among all of the tortfeasors ... [and each will] be only severally liable for any non-economic damages, and joint and severally liable for economic damages

[Apportioning comparative responsibility is not governed by any precise formula. A factor to consider would be the degree of unreasonableness of the actor’s conduct under the circumstances. Moreover, actor’s abilities and disabilities can be considered, even if these are not taken into consideration in determining the standard of care. Also to be considered is the extent of the actor’s awareness, intent, or indifference with respect to the risks.

Here, Able was a medical student, presumably aware of the risks of injecting “large doses” of narcotics into his guests, and he planned the party, stealing the drugs to make it possible to do so. This behavior is more blameworthy, perhaps, than that of Baker, who was deluded and not acting with any intent to harm anyone. Charlie’s conduct is more difficult to assess, as Charlie was mistaken about Peter’s intent, but, Charlie brought a gun to the party, and that indicates some indifference to risk. Finally, Dana’s conduct was the sole cause of the burning, and she should be liable for divisible damages associated with that injury.]