

Part I (Essay, 1 hour recommended)

It was a dark and stormy night. Alan opened his front door and dreaded having to go out into the rain. Still, he had a concert ticket that night for the reunion tour of his favorite heavy metal band, Res Ipsa Loquitor. Bundling up in overshoes, rain slicker and hat, he grabbed his umbrella. He went into his garage and got into his car. Just at that moment, Bob drove in front of Alan's house and parked his Suzuki Samurai on the street but partially blocking Alan's driveway. Alan immediately got out of his car and screamed into the storm "You idiot! You're blocking my driveway. I've got to leave now!!" Bob turned and yelled something that sounded like "Don't be hysterical; I'm only going to be a minute," made a rude gesture at Alan, and then ran off across the street.

Alan returned to his car and slammed it into in reverse gear, leaving his garage and traveling down his driveway toward the street. Although he probably could have bounced off the curb and avoided contact with the Samurai, he instead backed directly in a straight line, a line that happened to include Bob's parked vehicle. Alan smashed into the rear half of Bob's Samurai and sent it jack-knifed into the street. Alan fumbled with his gear shift. Although he thought he had shifted into "Drive," in reality the car was still in "Reverse" and it again hit the Samurai, although this time with only a slight "bump." Alan correctly put his car into "Drive" and sped off to the concert.

Bob heard the sound of the collision and noticed Alan speed by him. Through the rain he looked back to where he had parked and noticed that his vehicle was now perpendicular rather than parallel to the curb. He saw the damage to the rear and instantly realized that Alan was responsible for the hit-and-run. Bob jumped into his vehicle and gave chase. Unfortunately, Bob had failed to notice that the slight force of the second collision had ruptured the Samurai's gasoline tank. Thus, as he sped after Alan, he was unaware that the Suzuki was steadily leaking a stream of gasoline.

When Bob arrived at the intersection of Main Street and Oak Street, he failed to slow down and instead hit a speed bump at high speed, throwing his vehicle slightly into the air. It was enough, however, that when the Samurai returned to the asphalt, the force of the descent cut a further hole in the gas tank, leaving a large pool of flammable gasoline in the intersection. Just then the storm came to a temporary halt and the rain stopped. .

As Bob cleared the intersection, speeding away into the night, Corrine crossed the Main Street intersection, returning from a laundromat with a basketful of clean washing. Unknown to Corrine, she dropped one of her freshly laundered towels directly in the puddle of gasoline. Corrine continued on her way home. The dropped towel soaked up most of the gasoline in the puddle. Doug then drove into the intersection, smoking a cigarette. Just as he passed the gasoline-soaked towel, he tossed his still burning cigarette butt out of the driver's side window. Doug also then continued on his way.

A state statute provides as follows:

“No person in any vehicle and no pedestrian shall throw or discharge from or upon any road or highway or adjoining area, public or private, any lighted or non-lighted cigarette, cigar, match, or any flaming or glowing substance. Any person who violates this section is guilty of a misdemeanor.”

The discarded cigarette butt ignited the gasoline-soaked towel and it started to burn. A few minutes previously, Elijah also noticed the break in the storm but feared it would start up again and wanted to be home before it did. He therefore left his office where he was employed as an accountant for Junction City Railroad and drove home where he planned to finish his monthly bookkeeping reconciliation. Because his front windshield was fogged up, when he entered the Main/Oak intersection Elijah did not see the burning towel, and instead drove over it. The velocity of his car’s travel picked up the burning towel and it became entangled in the car’s axel. Within a few seconds, the fire spread to Elijah’s gas tank and detonated his car. The explosion threw Elijah out of his car and through the front window of Fanny’s Antique Store. In addition to obviously breaking the window, Elijah landed on a porcelain figurine priced at \$100,000, shattering it.

Assume that all of the above can be proven by competent evidence. Based on the foregoing series of unfortunate events, fully discuss the potential tort claims and their likely result that could be asserted by:

1. Bob;
2. Elijah; and
3. Fanny.

Be sure to identify the defendant and his or her potential defenses in each cause of action.

END OF PART I

Part II (Essay, 1 hour recommended)

Alex was in a serious car accident which caused internal wounds. At the hospital, he was informed that he would need surgery. He signed the consent forms, had the procedure, and all went well—he made a full recovery. Sometime after the surgery, however, he discovered that the doctor who performed the operation was HIV positive¹ and that he was aware of his condition, but did not disclose it, before performing Alex’s surgery. Alex immediately got tested and the results were negative, but he was informed that he would have to be retested at least every six months for the next two years in order to be certain that he had not been exposed to the virus.

Alex is now very stressed. He is obsessed with the possibility of getting sick, and he panics at the slightest symptom of any kind of illness. He has not been able to eat or sleep and, due to the resulting fatigue, he had to request a leave of absence from his job. He has lost a significant amount of weight.

Alex is seeking legal advice. Based on the foregoing facts, please answer the following questions:

1. From the plaintiff’s point of view, what cause or causes of action can be raised on Alex’s behalf, and what are the best arguments in support of them?
2. From the defense point of view, what arguments can be asserted in opposition to Alex’s claim or claims?
3. Now, assume the role of a judge. The defense has filed a motion to dismiss the lawsuit, and after some preliminary research you have determined that this is a case of first impression in your state. Write a short opinion granting or denying the motion. Be sure to thoroughly explain the reasons for your holding. Consider the elements that must be established for this type of lawsuit as well as the underlying policy issues.

END OF PART II

¹ Being “HIV positive” means a person has been exposed to the virus that causes AIDS. Although an HIV positive person does not necessarily have AIDS, he or she can transmit the virus to other people. However, the virus can only be transmitted from one person to another through actual blood to blood contact.