

## Best Exam Answer – Torts I – Yates

Avery v. Billy: Battery

I: Did Billy commit a battery against Avery?

R: Battery is an intentional hurtful or offensive contact to another. Intent is the desire to contact or action with substantial certainty that a contact will occur. Here, Billy yelled at Avery and intended to force him out of the store. Harmful or offensive contact is measured objectively based on a Reasonable prudent Person (RPP) standpoint. Would RPP consider Billy's actions harmful or offensive or are they a part of the crowded world that we should expect and tolerate. When someone goes into a store even one that is closed, especially taken escaping the elements, one would not expect to be "knocked", "grabbed" to "shoved" to the floor. One would expect, if necessary, to be repeatedly asked to leave and the cops called if they refuse. Therefore Billy committed a battery against Avery. See end for Protection of Property.

The coffee store may be held vicariously liable for Billy since Billy was acting in "the scope of his employment" even if such actions do not fall within the normal "scope of work" such as an intentional tort. There, Billy was in the store and was trying to "usher" a customer out. The employee may claim he exceeded his duties or was "after hours" however, vicarious liability through respondent superior extends to such situations. So long as Billy was not frolicking, he was under the scope of employment. Therefore, the coffee shop is also liable to Avery.

Avery v. Coffee Shop: Fang

The coffee shop is strictly liable for its ferocious dog, especially a 180 lb German shepherd. Here, Avery would either be considered a licensee or even an invitee because it is a coffee shop that is normally open to the public. Since it was closed, Avery would probably be considered an licensee, when asked to leave, perhaps a trespasser, however,

the coffee shop is liable for any damage or harm caused by animals on its premises. Therefore, the coffee shop is liable to Avery for the damage caused by the dog.

#### Coffee Store v. Avery: Explosion

A person is liable for his actions when he breaches a duty he/she owes, and that breach is the actual and proximate cause of an individual's damage. Cordozo tells us that we only have a duty so foreseeable plaintiffs within the "zone of danger"; Andrews on the other hand tells us that we owe a duty to the world and liability is cut off with causation. Here, Avery had the duty to act as an RPP would under the same and similar circumstances. When he was "thrown out" of the coffee shop he decided to get even with the store by snooping around and trying to sneak inside. A RPP would have called the police and reported the battery; not get over. Therefore, he breached his duty by breaking in and proceeding to snoop around with a cigarette lighter. He further breached his duty by inspecting the chemical box with an open flame, when there was clear warning of the dangerous chemicals. At this point, when breaking into the store, Avery was a trespasser and the store had very little duty towards Avery, unless perhaps break-ins were common and even then the store properly labeled the danger. Avery's actions were also the cause of the explosion. But for him breaking in and using a lighter and inspecting a box filled with explosive chemicals the explosion would not have occurred.

The explosion and fire was also a foreseeable change due to Avery's breach. Under *Polemis*, an individual is liable for all harm if some harm was foreseeable; under *Wagon Mound*, he is liable for foreseeable types of harm and under *Palsgraff*, he is liable for foreseeable harm. Here, breaking in and using a cigarette lighter to inspect a box filled with explosives, it is foreseeable that an explosion and fire would result.

The store did catch on fire and inevitably did suffer some damage from the explosion. Therefore, Avery is liable to the store.

### Candy v. Avery: Death

But was Candy's death as foreseeable result from Avery's death. This somewhat depends on which test you use. Under \_\_\_\_\_ it would not be foreseeable that the explosion and fire you causing causes someone to slip on a puddle of water and then, while trying to be rescued gets left face down in a puddle of water. However, under Palsgraff and Bleau it is foreseeable that because of an explosion and fire someone could possibly be killed. Therefore, under the latter, Avery would be found liable. However, Avery would argue that Billy's rescue attempt was a superceding intervening cause if anything, he is contributorily or competitively negligent in "leaving" Candy. While, Billy dragging Candy was an intervening course, it was dependent on Avery's negligence and should not therefore bar recovery.

### Candy v. Billy

Whether Billy was jointly liable depends on whether he was negligent to Candy. Billy had not duty to rescue Candy but when he did, he took on the duty and had the obligation to act as an RPP would under the same emergency conditions.

Here, he had the duty to rescue Candy in a responsible manner with all things considered. He breached that duty when he "only dragged Candy to the front door and left her on the sidewalk." He had time to leash-up Fang but not enough to take Candy away from danger. He knew she was unconscious and that it was raining and it was impractical of him to leave her face down in water. But Candy fact down in water, Candy would not have drowned—she would of only hit her head and been knocked unconscious. She may have been burned alive if she was left there so at the very least , his breach was a substantial factor in her death. It is also reasonably foreseeable that leaving someone unconscious and face down in water could kill them. Candy did die. Therefore Avery was negligent to Candy and further, since Billy was not acting "in concert" with Avery, Billy and Avery are not jointly and severally liable, rather each are separately liable.

### Eddie v. Disco

Disco has the duty to keep the contents of its premises in a safe and secure manner in or to not cause harm to buildings and pedestrians nearby. It breached this duty by violating the state's law. The law intended to protect individuals from explosions. A brick (shrapnel) flying and hitting a car appears to be the sort of thing this law intends to protect. But for the explosion, the brick would not have hit Eddie's car. The brick hitting a passing car is a foreseeable consequence of failing to store dynamite properly and an explosion ensuing. Eddie's car was hit by a brick. Therefore Disco is liable to Eddie.

### Avery v. Eddie

Eddie owed a duty to all pedestrians and other motorists and should operate his vehicle as a Reasonably Prudent Person (RPP) would under the circumstances. While he was driving slow (10 mph) he was also intoxicated. Voluntary intoxication is no excuse. Therefore he breached this duty by drinking and driving. Additionally a RPP would not hit the accelerator instead of the brakes. A RPP would hit the brakes and see what happened.

But for Eddie hitting the accelerator and breaching his duty to drive safely and reasonably, he hit Avery in the street. Hitting a pedestrian in the street is a foreseeable harm arising from such behavior. Avery was damaged, therefore, Eddie is liable to Avery. Eddie will argue that Avery was comparatively negligent in going into the street. However, one must drive cautiously and expect people to "dart out"—especially if there is a raging fire going on. People will be looking at the fire and not the road.

\*Billy may try to claim a defense of protection of property, however he is limited to reasonable force, hitting someone is unreasonable.

### Essay No. 2

Dear Texaco,

Your liability in each of your respective lawsuits appears to turn on the foreseeability of such damages; however before getting into depth on each, we need to look at the property

at first, what duty you owe to those who come onto it and what duty you owe to the surrounding properties due to the negligent actions that take place on the property.

While I believe it is marketably strategic for an oil company to be a “good neighbor”, “looking the other way about people trespass does have its problems. By not taking any affirmative actions to control, or prevent persons from using your land, you may be liable for the negligent actions that take place. For example, you owe “known trespassers” the duty to warn of artificial conditions, the swimming for instance. Additionally, neighboring properties may hold Taxco liable for any negligence in not properly controlling such trespassers as well as failing to abort weeds to control fire hazards.

Each of Alex, Betty and Casey’s lawsuits arise from a fire that started on your property pole due to your negligence is not properly deterring known trespassers, regulating their conduct and negligently maintaining your property as “overgrown.”

As a property owner, you have a duty to maintain and operate your property as a RPP would under the circumstances. You owe this duty to either foreseeable plaintiffs (Cardozo) or to the world at large (Andres). Your breach depends on whether you failed to meet this standard in that you failed to operate and maintain your property as a RPP would under the circumstances. As the property owner you should have known about the “sundowner winds” and in fact you did know about people using the property for hiking, skateboarding, picnics, even barbecues. Given this, a RPP would either: 1) Put up a fence to keep these people out 2) clear brush fire breaks to prevent a fire 3) if you allow people on the property make them expressly assume all risks including fires from their conduct 4) or at the very least, provide a barbecue cover that would be safe to barbecue, 5) you could also put up no trespassing signs or no fires...but you did not. Therefore, you breached your duty to your neighbors by failing to meet the RPP standard of care for property ownership. In this light, we will need to determine whether the 3 lawsuits are a foreseeable consequence of your breach.

### Alex

While the primary cause of Alex's injuries appear to be from a speeding Lexis, he ran across the street to "check the progress of the fire" and therefore, the fire was a substantial factor in Alex's damages. However, was this the proximate cause? Is it foreseeable that a fire would cause someone to run across the street without looking just to be hit by a speeding motorist. Only under Polemis, (if you foresee some harm you are liable for all harm) does this work. It would be foreseeable for someone in the property to of been burned but not run over by a speeding car. This is a little too attenuated. Rather, the speeding vehicle appears to of been an independent superseding intervening cause that is intrusive enough to preclude liability for Texco. The Lexis had the duty to drive safely and look out for pedestrians as a RPP would. His breach (speeding) caused Alex's injuries. If we had been driving at a safe speed he could have stopped.

Therefore, Texco is not liable to Alexx.

### Betty

Good news with Betty. She faces a similar fate as Alex; let me explain. Betty lives just 15 miles away and is therefore a foreseeable plaintiff. Her argument is "gong to be that but for your fire using up all firefighting resources, her house may have been saved. However, the fire was caused by blow-torching paint off the house. When the painters said it was a bad idea given "sundowner wind" conditions, she assumed the risk of potential fire. Therefore, the proper analysis in terms of proximate cause was it foreseeable, that because of your breach, that you take up all firefighting resources and that, as a separate fire caused by someone else's negligence would not be able to be controlled resulting in total destruction of someone's house. I think not – what is foreseeable that your fire would venture to neighboring property and cause damage. Again, too attenuated except for perhaps under the Polemis rule.

Therefore, Texco does not appear to be liable to Betty. Things may have been different if she did not blow torch on that day, but they are not.

## Casey

The question here is, do you have a duty to someone 50 miles away? Under Cardozo, n, or property 50 miles away is not a foreseeable plaintiff. Individuals that are known to be trespassing, neighbors properties are foreseeable, but not one 50 miles away. However, under Andrews, you have a duty to the world at large, so lets proceed under that premise. Now. Casey is different from Betty in that he did not cause the tile or assume any risk nor is he like Alex where Alex's damage was from an independent party. Here, but for the fire and ember for the fire landing in a truck, Casey's house would not of caught fire. However, here, liability turns on whether it was foreseeable or not. This is a little trickier because arguably it could be foreseeable. We all know that major fires cause embers and embers fly. There are more embers with more vegetation. Part of your breach was your failure to control an "overgrown" property. It is foreseeable that an ember could fly to another property, access roads and fire breaks, or even through the air as much as 5 miles away; but one lands in the back of a pick-up truck full of dead leaves and weeds and then that pick-up traveling 50 miles with a burning bed and another ember flying onto Casey's roof is a little of a stretch.

If anything, the truck driver was negligent in not noticing the bed of their truck burning. They have the duty to drive a safe vehicle, certainly not noticing a fire in the back of their truck is in breach of this duty.

Therefore, Texco does not appear to be liable to Casey, however, he may have the strongest case against you.

I recommend being a "good neighbor" and fence and maintain your property pursuant to all CDF regulations regarding weed abatement and fire control measures.

Good luck drilling!