

TORTS B – PRACTICE MIDTERM MODEL ANSWER
PROFESSOR FORELL

Edwina v. Willy. The facts indicate that the only claim which Edwina may bring against Willy is for trespass to land. Actionable trespass requires conduct by defendant which intentionally invades or interferes with plaintiff's right to exclusive possession of although Willy may not have purposefully interfered with Edwina's right to exclusive possession, he did volitionally run through Edwina's backyard. This is enough for a technical trespass. Therefore, on the basis of these facts Edwina can recover nominal damages for trespass without having to prove actual damages – indeed, the facts do not indicate that Willy caused any damage when he took his shortcut. However, the subsequent events that resulted in Edwina being tackled etc. arguably can be attributed to his intentional conduct because foreseeability is not an element of an intentional tort.

Willy can raise the privilege of consent; if Edwina's conduct in waving at him would be reasonably understood to be intended as consent, Willy would not be liable for trespass. O'Brien. Here, the facts indicate that Willy should at least be able to raise the issue of consent.

Edwina v. Ralph. Although Ralph may have a defense to her claims, Edwina can bring an action for battery, trespass to chattels and, possibly, trespass to land.

Battery is an intentional act which causes harmful or offensive contact with plaintiff's person. Defendant must purposefully cause the contact or believe with substantial certainty that the contact would occur. Whether the contact was offensive is determined by the objective test of whether it would offend a reasonable sense of personal dignity.

The facts show that Ralph intentionally pushed Edwina to the ground and grabbed her pruning shears from her hand. This would be at least offensive contact and arguably harmful contact as well, and, therefore, a prima facie case of battery is made out. However, Ralph could not also be held liable for assault because Edwina did not suffer apprehension of imminent contact; she was attacked from behind.

Trespass to chattels occurs when defendant intentionally causes a minor physical interference with plaintiff's use and enjoyment of her personal property. Where, as here, the invasion does not rise to the level necessary to establish conversion and thereby require a forced sale, an action for trespass can be brought.

Actionable interference is shown where defendant either intermeddles with plaintiff's chattel or dispossesses plaintiff of the chattel. The latter is the basis of

an action here. Where defendant's action caused a loss of possession, as occurred here however short in duration, such loss is compensable.

Here the facts establish that Ralph intentionally took Edwina's garden shears by physical force. She even suffered a slight injury retrieving them. Under these circumstances unless Ralph was privileged to take such action, he would be liable.

Assuming Ralph went on Edwina's land when he chased and tackled her, he would also have engaged in a trespass to land by interfering with Edwina's exclusive possession.

In this context, Ralph may contend that he took action in order to defend his friend Willy from being attacked by Edwina. However, there is no evidence in the facts provided that Edwina was going to harm or even seriously threaten Willy. Unless Ralph had some special knowledge that Edwina had violent tendencies (of which no facts are provided), Ralph's conduct was clearly excessive and unreasonable both as to belief that a danger existed and as to the amount of force he used; he should have at least first asked her to stop. It is highly unlikely that Ralph's conduct will be found to be privileged as to the battery and trespass to chattels; however, he may possibly have been privileged to trespass on her land under the circumstances. Any claim of mistake except possibly trespass to land will fail the reasonableness requirement.

Ralph v. Lenny. Ralph can bring an action for battery. See elements discussed above. The facts indicate that Lenny threw the rock intending to hit Willy. When the rock hit Ralph instead, the doctrine of transferred intent made the conduct a battery on Ralph. Ralph may also have an action for assault if he saw the rock coming at him.

Lenny v. Edwina. Lenny can bring an action for assault and false imprisonment. If for some reason Lenny can bring neither assault nor false imprisonment, he can try intentional infliction of emotional distress (IIED) which typically is only available if other intentional torts are not available since the emotional harm being recovered for in an IIED action can be recovered under another intentional tort action and thus the damages sought would be redundant. IIED was invented to allow recovery for severe emotional distress where for some reason a traditional intentional tort was not available.

An assault is conduct which intentionally creates in plaintiff an apprehension of imminent harmful or offensive contact with plaintiff's person. The threat of future harmful or offensive contact is legally insufficient and this would be an issue here. Was Lenny put in apprehension of imminent harm or offense or only future harm or offense? The facts indicate that Edwina should be liable for assaulting Lenny so long as her words and conduct are viewed as

creating apprehension of imminent harmful or offensive contact which they probably are.

Liability for false imprisonment requires intentionally restraining plaintiff within boundaries set by defendant. Although plaintiff must be confined, no physical barrier is necessary to cause such confinement and threats of physical harm will suffice. Plaintiff is not required to resist or attempt to escape. Plaintiff must be conscious of confinement or, in some jurisdictions, harmed by it. The length of confinement is immaterial as to making a prima facie case but is relevant as to the amount of damages. Here the facts indicate that through physical force and threat of imminent physical harm, Edwina confined Lenny as he lay on his back on the sidewalk and, therefore, a false imprisonment action probably is available.

The tort of IIED requires that defendant act outrageously and has caused severe emotional distress. It is unclear that either of these elements could be shown here. So even if a court allowed an IIED action in addition to other intentional tort actions, the elements of outrageousness and severe harm probably would be missing.

A reasonable and good faith mistake of fact as to self-defense might be argued by Edwina here. However, she can't claim self-defense and then argue mistake unless she had apprehension of imminent harmful contact from Lenny because she thought he was the person who had just attacked her. If all she was doing was retaliating, then her self-defense/mistake claim will fail even if her mistake as to who attacked her was reasonable.

My recommendations as to whether to sue in all of the above cases would be to advise my client that all the claims and injuries are trivial and that their money and psychic energy would be more well-spent on other endeavors.

P.S. This was an Oregon Bar Exam question a few years ago.