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Answer-to-Question- 1

Duty might be defined as the imposition of legal rights and responsibilities. Because duty arises out of legal principles (eg. the inviolability of the person, the vindication of dignitary interests, the protection against harm to the person or property), courts have viewed the interpretation or imposition of duty as legal issue, which is determined by a judge.

very clear intro

This is partly because, in the common law, duty evolved slowly. Courts were historically hesitant to impose common law duties on individuals. Originally, duty was restricted to instances in which there was some form of contractual relationship. (See Winterbottom). However, English and American courts slowly expanded duty as a legal principle to include duties to parties even in the absence of a relationship (See MacPherson v. Buick, where the court held that a duty may arise out of foreseeable harm irrespective of a special relationship). The general rule was that an individual, when acting affirmatively, had a duty to comport themselves with reasonable care such that another individual would not be harmed by their conduct. Courts also recognized qualified duties, arising out of special circumstances or relationships (eg. common carrier relationship; duties arising out of the ownership of property; duties imposed on business owners). However, in these instances, the duties were qualified in terms of the relationship between the parties.

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evolution

In the 1960s, duty was significantly altered by two California *Rowland* and *Tarasoff*. In *Rowland*, the court did away with the division between classifications of visitors to a property. In *Tarasoff*, they imposed a duty to protect third-parties on a psychotherapist for a potential harms by patients to third-parties. The court in both cases suggested that a presumption of duty could arise depending upon seven-variables, all of which spoke to the degree of foreseeability, the relationship between the parties, and the public policy and social implications of the imposition of the duty. Even as it expanded duty, the court was making careful calculations when duty should be or should not be extended.

In other words, duty was viewed as a complicated issue which could be made still more complicated by entrusting it to a jury. Additionally, expanding duty without careful regard for the

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circumstances and historical development of the common law could have troubling consequences. A jury might impose a duty <sup>without</sup> any regard to consequences, which would lead to inconsistency and uncertainty in the application of the law. As a result, judges have been traditionally viewed as the best situated to define duty.

Contrasting duty to breach or causation, both of which are factual issues, also explains why duty should be a legal issue. Breach and causation typically arise out of the specific circumstances or facts of the case. Although duty is tangentially connected to the relationship of the parties, it arises out of variables exogenous to the facts at hand: common law (qualified duties), statute, public policy (Tarasoff), and even at times moral considerations (although some scholars, such as Epstein, hotly contest such an interpretation). *✓ excellent*

Whether we view the purpose of tort law in terms of corrective justice or economic efficiency, issues of fairness and administration are best met by placing duty in the hands of an individual best situated to define duty. Parties and non-parties are served by consistent interpretations of duty, arising out of precedent. Administration of duty is easier for the courts when duty is carefully defined, whereas leaving the issue for the jury might lead to so many different duties that it becomes <sup>obsolete?</sup> absolute. Lastly, duty, in limited circumstances, allows a judge a hand in the administration of the law, whereas the jury has an opportunity to address issues of fairness in terms of breach and causation. Given the historical *✓ good* development, the care with which courts must impose legal responsibilities, and issues of administration and fairness, duty is decided as a legal issue, as opposed to a factual issue.

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Although the European rule would address some concerns about products liability in the United States, the rule embodied in the U.S. Restatement of Torts embodies principles at the heart of American tort law: it facilitates compensation of injured parties; encourages all parts of the supply chain to act responsible toward consumers; and promotes efficiency by encouraging safe design.

nice holding in of background fact w/ you argument

There are some benefits to the European rule, which limits strict liability to producers and excludes retailers and product designers. First, if tort law is viewed in terms of corrective justice, it does not appear equitable to hold retailers and product designers accountable for harms caused by faulty manufacture. Second, exempting product designers avoids a hotly contested issue in the United States, which is that of "design defect." The controversy surrounding design defect is that the tests for determining it (risk-utility; occasionally consumer expectation) are normative. However, the European rule side-steps design defect to the degree that it holds only manufacturers and importers accountable.

& perhaps reflect notions of negligence

However, the American rule better promotes efficiency and fairness. In terms of compensating injured parties, increasing the number of potential parties facilitates compensation. Regarding fairness to retailers, the American system permits retailers or sellers to indemnify the manufacturer. This may lead to additional disputes, in which parties litigate indemnification clauses, but administrative congestion is outweighed by fairness to the injured party. Additionally, efficiency is served to the degree that the rule encourages retailers to include indemnification clauses in contracts.

nice acknowledgment of courts as

as if may not know mfg or mfg may be insolvent

Second, if we view tort law in terms of deterrence, the Restatement rule encourages retailers to have some knowledge about the product being sold. In a consumer society, where many products are mass produced, the retailer is in a unique position to obtain additional information about a product. By holding retailers to a higher standard than that of a negligence claim, the Restatement deters them from ignoring the hazards associated with a product and encourages them to avoid selling products sold by careless manufacturers.

& differential

Third, the American rule permits recovery against product designers. As mentioned above, the European rule side-steps some of the controversies associated with design defect to the degree that it

excludes product designers. However, there are a number of instances in which the defect may be inherent in the design of the drug. Where all of the drugs are manufactured consistently by a manufacturer, a party might be precluded from making an assertion against the actual designer. One example of this might be in prescription drugs, where a drug causes risks that are known to a designer (Eg Vioxx).

Lastly, reformation of the US rule is not appropriate when strict products liability appears to be on the decline in the United States. Although there are controversies surrounding design defect and how to apportion damages (market share vs. industry share), the number of strict products liability suits has seen a decline since its heyday in the 1960s through 1980s. In other words, the American model may not be creating the type of strain or inequity that justifies the adoption of an entirely different model, especially since adopting the European model would serve to hurt American consumers to the degree that it limits the ability of an injured party to recover and fails to deter product designers from acting carelessly by holding them to the standard of strict liability. As a result, the American model best serves the US tort system.

✓ excellent

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higher-level thinking than  
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a few typos

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Answer-to-Question-3

How would tort law address the problem of bullying in schools?

I. Tort law should address the problem of bullying in school.

In some respects, whether tort law should attempt to regulate bullying is similar to the debate over

whether tort law should regulate medical malpractice. <sup>if does this already; do you mean reform?</sup> In terms of medical malpractice, proponents of limiting the extent to which tort law affects doctors and hospitals have argued that (1) doctors are uniquely situated and trained to make decisions about the human body, (2) jurors are not in a good position to second-guess the judgment of medical professionals, (3) tort law limits the degree to which medical professionals are able to resolve health problems, and (4) other alternatives - peer review, independent panels, loss of license - are available to deter misconduct or carelessness.

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The similarities are striking. One could argue the same arguments <sup>for tort law addressing</sup> School teachers and <sup>bullying,</sup> administrators are more experienced and knowledgeable about the social make-up of a school. <sup>Jurors and empty</sup> Jurors may not understand the nuances associated with children psychology or behavior. A school administrator or teacher may not be able to act effectively if in fear or tort law. <sup>direct</sup> Lastly, the argument <sup>✓ good</sup> could be made that criminal law and school regulation already provide adequate protections.

However, none of these justifications provide a sufficient justification for barring tort claims. Although school teachers and administrators are uniquely situated, tort law assumes that jurors are able to make reasonable assumptions as to the professional and/or ordinary standard of care. In point of fact, <sup>principle</sup> tort law seeks to enforce duties imposed by legal relationships, and the teacher-student relationship is one example where there are certain duties which society would like enforced. Furthermore, although there may be costs associated with litigating negligence suits for administrators that limits the school districts ability to be able to educate efficiently, a state legislature may enact some form of sovereign immunity to protect itself from simple negligence claims. And the ability to educate is served by deterring gross negligence when it comes to bullying. Lastly, tort law (as discussed below) supplements criminal law and school regulation. <sup>good</sup>

Indeed, bullying may be on the rise in the United States. Changes in social media have made <sup>d</sup> bullying much more potent and harmful. (See fact-pattern, Reuters suicide, and Finkel v. Dauber.) <sup>good</sup> More importantly, while criminal law and school regulations may deter and punish bullies - they do little <sup>diff</sup> to compensate the harms suffered by the victim. Assuming that tort law serves to compensate victims <sup>function</sup> and deter wrong-doers, tort law provides more redress than criminal statutes or school regulations.

Prospectively, tort law provides general and specific deterrence, since there are monetary incentive for administrators and parents to deter bullying. Retrospectively, tort law reaches back to provide relief to the victim. *or the family*

II. Tort law, school regulations, and criminal law are not <sup>*mutually exclusive*</sup> mutually exclusively. Tort law, with respect to bullying, can and perhaps should supplement school regulations and criminal law.

Again, a similarity might be <sup>*again*</sup> drawn to the relationship in medical malpractice suits between regulation, criminal law, and tort law. In medical malpractice suits, the legislature may limit the extent of tort law (See Utah's Medical Malpractice Statute, where a victim is required to go before a panel prior to bringing suit). Regulations and criminal law serve to punish and deter, while tort law assists by providing a private cause of action for the injured party.

Similarly, in bullying cases, tort law, school regulations, and criminal law serve to supplement one another. School regulation might held deter and punish bullies. Criminal law might hold school administrators responsible, and both regulation and criminal law are probative of whether a duty has been breached by an administrator or teacher. However, neither alone address the harm suffered by the victim. As in medical malpractice or prescription drug suits, while other avenues for relief (independent or governemtn panels) could be created, in bullying cases there are multiple parties: administrators, students, teachers, and the victim. The basis of tort law is defining relationships and imposing duties, and it is uniquely situated with the complicated questions of duty, breach, and compensation for private individuals.

In conclusion, because tort law provides an avenue of relief to injured parties unavailable under school regulations and criminal law, and because it serves to supplement school regulations and criminal law, the case can be made that tort law should concern itself with bullying in schools.

*Not sure this is completely true for most torts / civil cases*

*good*

### III. POTENTIAL CAUSES OF ACTION

#### A. Wrongful Death and Survival Actions

The first issue is whether the family will be able to sue for harms incurred by Phoebe. Under the common law, an individual's claims were extinguished at their death. However, this standard was ameliorated by the adoption of a statute (Lord Campbell's Act) which permitted recovery on the part of a family for the wrongful death of a family member. Subsequently, many states adopted similar wrongful death statutes. Because it arises out of statute, as opposed to the common law, there is substantial variation jurisdictionally with respect to wrongful death actions with respect to who may bring them and what type of damages are recoverable. As a result, the first step of Lauren's family should be to investigate the wrongful death statute in the state of Massachusetts. <sup>(Sister)</sup>  
*Phoebe's*

Traditionally, wrongful death actions have been distinguished from survival actions. A survival action is the harmed accrued by an individual prior to their death. (See *Nolan*, court held that the survivor may bring a survival action for the mental suffering incurred five seconds prior to son's death). Here, Phoebe's family should attempt to recover for any harm suffered by Phoebe prior to her suicide, because there is evidence that Phoebe suffered significant emotional harm from potential invasions of her privacy, assault, intentional infliction of emotional distress, and perhaps even because of the negligence on the part of school officials. (Causes of action described in more depth below.)

Phoebe's family might also consider a wrongful death action. In *Nolan*, the court stated that a Nebraska statute barred recovery for emotional damages arising out of the loss of a family member. However, the courts allowed that some states did permit recover for medical expenses, loss of consortium or emotional damages to family members. Here, it is prudent for Lauren's family to argue for as many types of general and specific damages as possible, since there were a variety of harms incurred. <sup>against? School? High school?</sup>  
*will explain later?*  
*Phoebe*

There is an issue of whether Phoebe's family will be able to recover for wrongful death arising out of a suicide. In *Williams v. Manchester*, a court refused to allow a wrongful death claim when the

mother decided to abort the baby, since the mother would have had to prove that the baby would have lived but for the defendants actions. Here, Phoebe's claim for wrongful death (which will be complicated by proximate cause) could be barred by the court, because there is presumption that she could have prevented the death. Phoebe's family will need to establish that her suicide occurred outside of her own volition. Pertinent to this analysis will be whether Phoebe actually was taken anti-depressants at the time of her death. (See Bybee v. Abdullah.)

In conclusion, Phoebe's family should attempt to bring both survival and wrongful death actions, despite the fact that Phoebe committed suicide. Phoebe's family must argue that Phoebe's suicide was preventible and involuntary. Such an approach allows them to recover under other tort claims. If the statute allows, Phoebe's family may be able to recover a variety of damages.

duty - ?  
RPS - breach?

B. Privacy Violations

craigslist post? or comments based on private info?

Phoebe's family should consider raising the issue of violation of privacy, even though the family will likely not be able to prevail on a privacy action alone. b/c...

The facts indicate that some form of defamation occurred. Defamation requires a false or defamatory statement, directed at a third party, with fault amounting to at least negligence, which harms the victim. Although there are protection for the fair and accurate publication of public material (Medico), that does not appear to be the case for <sup>Phoebe because...</sup> Lauren. In particular, the statements published on facebook appear to have been false and plausible and deliberate (See Finkel v. Dauber where the facts must be plausible). Additionally, courts have held that publishing something on a public forum to a few people or a private forum to a lot of people was sufficient to establish publication. (See Yath). Here, classmates willfully published derogatory material on Lauren's facebook page which was false and harmed her reputation. The basic elements of defeamation have been met. - privileged due to implicit invitation for others to comment.

However, typically court's follow the general rule that a privacy claim ends with the death of an individual. As a result, a defamation claim, per se, would likely fail in state court. However, in limited

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instances, court's have viewed aggravated instances of other torts as meeting the requirements of IIED.  
(See *Miller v. National Broadcasting Co.*) Although the argument is tangential and likely to fail,  
Phoebe's family should attempt to raise defamation if also bringing suit against Lauren's classmates for  
IIED.

C. IIED

Phoebe's family has two potential IIED claims. First, Phoebe's family should attempt to raise the  
issue of intentional infliction of emotional distress against Lauren by her classmates and potentially  
school administrators. Second, Phoebe's family could consider an IIED claim for harm suffered by  
Lauren.

An IIED claim requires that the victim prove that the defendant behaved extremely and  
outrageously toward the plaintiff, the purpose of which was to cause emotional distress sever enough to  
effect a person's physical health, and actually caused the distress. Here, Phoebe's classmates continually  
and intentionally subjected her to emotional stress, which was so severe that it was noticed by teachers  
and potentially Phoebe's parents. Because it caused emotional stress resulting in a physical malady  
(depression) it is not be necessary to establish that there was traditional physical harm. (See *Littlefield*  
where the court permitted recovery even though there was no physical manifestation of the physical  
harm).

However, Phoebe must also prove that the defendants behaved intentionally or recklessly. Here, a

claim against her classmates would be easy to prove, since their conduct towards Phoebe was intentional.  
As a result, Phoebe's parents should bring an IIED claim against those students Ashley for conditionally  
threatening her on Facebook, as well as Kayla, Sharon, and Flannery for verbally intentionally berating  
Phoebe severely enough to cause emotional harm.

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A less likely claim would be that the school administrators behaved recklessly toward Phoebe by sending her away from the office without attempting to reconcile her concerns. Although the Restatement permits recovery for reckless acts, Phoebe was sent away from the office because the administrator was busy with something else, i.e. the administrator was careless as opposed to reckless. Here, there is an additional difficulty created by the degree to which the conduct was outrageous, since "merely offensive, insulting, or careless" behavior is typically not actionable under IIED. (See *Carroll v. Allstate*, where the denial of an insurance claim, while offensive, was not outrageous or extreme). Since the actions of administrators are careless but not outrageous or extreme, a claim against the school administrators for IIED is likely to fail.

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others involved; duty to warn family nothing else?

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A claim arising out Lauren finding Phoebe's body might also be actionable. The Restatement permits recovery by family members for emotional harm caused by harm to family members. Lauren's emotional harm was compounded by the existence of a scarf given to Phoebe as a gift. However, since Lauren will have difficulty demonstrating that the conduct was intentionally or recklessly with respect to her, since it was Phoebe who ended her life, the claim is unlikely to be successful.

In conclusion, Phoebe's parents should bring an IIED claim against her classmates, but refrain from bringing an IIED claim against the school district. Phoebe's parents should also refrain from bringing an IIED claim on the part of Lauren since it is highly unlikely.

because...

#### D. Assault

Assault requires a party demonstrate an action that is intended to cause apprehension of imminent harmful or offensive, which does cause the victim to apprehend that contact. Here, Lauren was threatened verbally by Ashley on Facebook, by Flannery when she chased Lauren through the halls, and by Ashley and others when they followed her in the car, even tossing a can in her direction, a court is

likely to find that there was an act which caused an apprehension on the part of Phoebe. Indeed, by the standard of a reasonable person, the events could objectively be viewed as causing both apprehension and fear, given that the average person would apprehend an offensive or harmful contact if subjected to such abuse. (See *Vetter v. Morgan*, where subjective fear not required, only the apprehension of a reasonable person.) A ...

facts here suggest fear (text to Phoebe's friend about threats getting physical.)

There are some limitations to the assault claim. Under the classical rule, mere words or conditional threats would not suffice. (See *Brooker v. Silverthorne*.) Although the modern rule ameliorates the harshness of the classical standard by taking into account circumstances and the parties involved (See *Vetter*), a claim against Ashley for her facebook post is unlikely to succeed, since the threat was conditional and not imminent. However, a claim against Ashley and Flannery for their conduct arising out of conduct in the hall or by the roadside is likely to succeed, since a court will take into account the fact that Phoebe was alone, that there was at least one male with Ashley during the roadside incident, and that it was after being teased most of the day at school.

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Furthermore, under the doctrine of transferred intent, Ashley's attempt to hit Phoebe with an energy-drink can could be used as evidence to establish the basic elements of assault. (See *Nelson*, where assault resulted in battery.) A battery claim would require that an intentional offensive or harmful contact occurred which caused harm to the plaintiff, but here there does not appear to be a contact between Ashley's energy-drink can and Phoebe. However, the throwing of the bottle was indicative of assault.

Lastly, assault and battery incorporate consent into the prima facie elements. However, Phoebe did not appear to provide express or implied consent to the bullying. Furthermore, many courts bar consent to criminal activities. Where the bullying occurred in violation of the no-tolerance policy, the court could conclude that Phoebe was unable to consent in any event.

In conclusion, Phoebe's estate should bring suit against both Ashley and Phoebe for assault, because both acted to create a reasonable apprehension of offensive or physical contact. Given the circumstances and that the prima facie elements have been met, the estate is likely to succeed.

E. Negligence

Phoebe's family should consider bringing a negligence suit against the school. To prevail, the family must demonstrate that the school had a duty towards Phoebe, which was breached, such that it actually and proximately caused an injury to Phoebe.

Tort law recognizes that qualified duties arise out of special relationships, especially when the type of contact was foreseeable, easily preventible, and in the interests of social and public policy (See *Rowland*, where the court describes seven factors in determining a duty towards others). Here, the duty to protect students arose out of the custodial relationship between school and student. (See *Tarasoff*, where a duty to protect may even arise irrespective of a special relationship.) Because Phoebe is a student, the school should reasonably <sup>have</sup> foreseen that acts of bullying might hurt her while in her care and that these acts could be prevented through the effective administration of a no-tolerance policy, i.e. the duty should be even greater than in *Tarasoff*. Given that it is in the interest of public policy to require schools to adequately protect students while on school grounds and coming from and to school, the school had a duty towards Phoebe to protect her from bullying.

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The next question is whether the school breached the duty, which could be evaluated in terms of a reasonable person or through economic analysis. Because a reasonable person could conclude that the school was not following the standard it had set for itself, expert testimony is probably not necessary to establish that a breach likely occurred, since the bullying continued for an extended period of time and even teachers recognized that Phoebe was emotionally distraught.

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Furthermore, if an economic analysis is used to determine breach, the school district likely breached its duty. Under the Learned Hand formula, a party may be held liable for breach when the cost of prevention is less than the probability of harm times the magnitude. (See *Carroll Towing*.) Here, the cost of warning other students was slight compared to the emotional and long-term harms caused by the

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student multiplied by the high probability of its recurrence considering the number of students involved.

Although an unsympathetic judge could skew the analysis by adding to the burden the cost of cameras (See *Wassell*), it more likely that the judge views the school district as the cheapest cost avoider for harms arising out of bullying, since it is the best positioned to deal with the problem. As a result, a court instructing the jury to make a determination of breach based upon this formula would likely discover that a breach occurred.

There are two other methods used to determine breach: *res ipsa loquitur* and professional standard. *Res Ipsa Loquitur*, a burden shifting device, does not apply because the instrumentality, fellow students, causing the harm was not under the exclusive of the school. However, in rare instances, courts have held industries to a higher standard than that of a reasonable person standard. (See *TJ Hooper*.) Where a school has a duty to its student and bullying is becoming more and more of a problem, a court could construct duty at a higher standard, which may require professional or expert testimony on school systems to establish whether a breach occurred. Here, however, a court is likely to find breach under a reasonable person standard or by means of economic analysis.

Phoebe's family must also convince a jury of causation. Causation requires both actual cause and proximate cause. Under the doctrine of actual cause, a party must typically prove that "but for" the actions of the defendant the injury would not have occurred. In other words, that evidence and inference drawn from circumstances make the defendant's conduct more probable the cause of the plaintiff's injury than not. (*Skinner v. Square D. Co.*). Here, the evidence suggests that "but for" the school administrator's failure to deal with the bullying, the harm would not have occurred. In other words, the school's nonfeasance was more than a substantial factor, but in fact more than likely to result in the plaintiff's injury.

However, Phoebe's parents must also prove proximate cause, which is legal issue determined by the judge where the judge considers whether the scope of the risk or foreseeability justifies attributing cause to the defendant. In other words, should the administrators have understood that bullying was within the

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scope of the managing a school. <sup>a failing to intervene in Phoebe's past case</sup> Since the no-tolerance policy indicates that it was foreseeable, indeed within the scope of risk for a school district, it appears that the administrators careless conduct did result in the harms caused to Phoebe.

There are limited exceptions to proximate cause, where a superceding event result in breaking the causal chain between parties. In fact, when an intervening party acts independently such that their actions cause the harm, it is sufficient to break the causal chain. (See *Pollard v. Oklahoma.*) However, since the intervening actions of bullying were reasonably foreseeable by the school district, there is substantial grounds for not freeing the school district from proximate cause. (See *Clark v. EI Du Pont.*)

that's a policy, foreseeable specific to facts at hand

Because of a high degree of foreseeability and the low cost of regulating bullying, a court is likely to find that the school district's carelessness was the actual and proximate cause of Phoebe's Injuries.

The final issue is whether Phoebe was actually injured. Tort law permits the recovery of physical and dignitary harms. As a result, since Phoebe's parents will be able to demonstrate significant emotional and dignitary harm arising out of the bullying and the administrator's carelessness, it is likely that the court will find at least the basic elements of an injury. ... a death

The school district may raise several defenses against Phoebe's family. A comparative fault defense is unlikely, since Phoebe attempted to contact school administrators concerning the bullying and the bullying occurred through (arguably) no fault of her own. The school district might raise assumption of the risk, which is a perfect defense, alleging that Phoebe "knowingly and voluntarily" continued to attend school. However, where Phoebe was a minor at the time of the incident, it will be difficult if not impossible to prove that type of defense. (See *Jones v. Dressel.*) Assuming that the family brings suit immediately, the statute of limitations will not bar their recovery.

though perhaps an eggshell arg. (buried gold hoax) not tied

As a result, Phoebe's family could and should bring a suit against the school district, assuming that no statute provides sovereign immunity to the school district for negligence claims. The prima facie

elements are likely to be met, and the school district is unlikely to prevail on any of the aforementioned defenses. As an aside, during the litigation, the school district might attempt to attach the students in order to apportion some of the damages to the students under the doctrine of comparative responsibility. (Although a parent may not be held vicariously for the negligent conduct of a child, there is the possibility that the parent's could be held liable for negligent supervision if the type of conduct was reasonably foreseeable and recurrent.)

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F. Conclusion and Recommendations

Phoebe's family has a number of claims arising out of Phoebe's deaths. Although these claims are predicated on the assumption that Massachusetts wrongful death statute permits <sup>her</sup> the estate to recover for the loss of Phoebe, <sup>is life</sup> there are also claims arising out of tortious activity towards Phoebe that occurred prior to her death. In particular, there is strong evidence to suggest that the family should allege that Phoebe's classmates, particularly Ashley and Flannery, assaulted and intentionally inflicted emotional distress upon Phoebe. Although Kayla and Sharon participated in the bullying, the facts at hand do not establish any particular, strong cause of action against either party, since Kayla and Sharon were either only present (Kayla laughed during one occurrence) or their acts didn't rise to the level sufficient to establish a cause of action (Sharon yelled at Phoebe but there's no evidence of apprehension sufficient for assault or outrageous conduct sufficient for IIED).

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More importantly, however, Phoebe's family should first bring a suit against the school district. First, the family is likely to succeed on the negligence claim. Second, the school district might be the best positioned to pay for the damages, assuming there are no statutory <sup>t</sup>limitations against schools in the state of Massachusetts for negligence claims. Indeed, although there is little evidence of willful and wanton behavior sufficient to justify punitive damages against the school district, Phoebe's family may recover compensatory damages with respect to emotional and physical harms to Phoebe and, depending on the statute, suffered by the family.

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It is important to note, however, that given that the school district might attempt to attach the bullies to the action and apportion damages to those families, Phoebe's family would be wise to prepare the other causes of action against Ashley and Flannery as it prepared its case against the school district.

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