

Question 1) Duty, is a legal issue for the judge to decide because the duty element in negligence is all about the relationships between the parties.

The judge spells out what the duty is based onⁱⁿ the particulars of the case so that the jury as fact finder can then establish if that duty was breached. As the law is flexible duty may change over time so it is the judge's job to clearly establish what the jury must be deciding. Some cases such as Tarasoff have very complicated relationships and emotionally charged facts. In these cases a judge must carefully establish what each duty was between

why? question asked why the state of affairs is the way it is. Why would sinny duty quest. to jury result in chaos?

the parties. If this were left to juries, chaos would result and the wheels of justice would grind to a halt.

2/5

Question 2.) The EU rule of not imposing strict

liability for defective products on retailers or

product designers but only on producers is a

better rule than the US system of design defect

suits and pursuing the entire distributive chain

because it keeps the liability where it belongs - How so? Cepeda?

on the manufacturer - and holds them to a concrete

standard; their own.

contribution
fixes this,
arguably U.S.
system accommodate
placing liability where
it belongs
better

The U.S. system of suing the entire chain

of distribution sounds good on paper as it would

than EU system

seem to make sure that the parties in every step of the chain are motivated to make sure the safest, most perfect product reaches the consumer. However, the reality is that each link in the chain has an indemnification agreement with their suppliers so the car dealer doesn't

What about
↑
access to justice
+
naming proper
through impleader
contribution?

worried about being sued because they have an indemnification agreement with the car manufacturer or distributor whereby they will pay the costs

often but not just about large car sales small mom & pop

of any suit. As most large businesses operate this way, only small business, which often have the least ability to withstand a lawsuit, are exposed the most to those lawsuits. The EU

privilege business over injured parties? (ok... but why)

approach eliminates this necessity.

The US system of suing and allowing suit

for design defects has an inherent problem

that makes it difficult to apply to a specific

set of facts; it has an external standard of

the "ordinary consumer." This nebulous standard

doesn't ~~give~~ ^{create a} concrete standard that alerts

manufacturers to the need to correct certain

aspects of their products.

Strict liability on "producers" which

the US system considers a manufacturing

defect has ~~the~~ ^{the} very concrete standard of

the manufacturer's own specification. As

Why not allow ^{only for mnfct defects} for design defects?

What's the alternative?
And negligence law has something similar; how does this all apply to product question about comparative advantages?

we saw in Gower, when a product does not meet the manufacturer's own standards

✱ it's difficult to duck liability and fairly straight forward to establish that liability.

The EU system keeps this liability thus protecting the consumer but also protects

the manufacturer by keeping things simple

and the standards clear - How is it > simple?

3/10

And why is this better when it comes @ expense of fair compensation? Justify-

Answer # 3 in book # 2 Question asks why and conclusion is OK but need > legal & policy support.

Question # 3

One of tort law's functions is as a deterrence mechanism to a general class of people whose behavior violates social norms. It has a role to play in reducing or eliminating the problem of bullying in our schools.

However, ^{modern} bullying as children such as Phoebe experienced

It is different from traditional bullying in that it can follow a child home and relentlessly persecute them via texting, e-mail and social networking sites such

as Facebook. The pervasive aspect of the new "severe bullying" means our responses as a society ^{may} wild be ^{don't} have to be; reactive, not ~~pro~~active. Still multiple aspects of tort law can be an effective instrument of change.

Battery, Assault, and ITED (Intentional Infliction of Emotional Distress) claims can be made against bullying students and negligence claims can force school districts in greater and more effective action through damage awards.

Tort law is not the only avenue to ^{ursue} persue in effecting change. School regulations, properly conceived, defined and enforced can have a dramatic effect on student behavior by suspending or expelling the primary bullies and/or the instigators of the bullying.

Criminal law is not an effective method of reducing bullying because bullying behavior often doesn't elevate to criminal behavior such as battery, the high evidence standard of criminal law can be

✓
or requiring
conferences
w/ all
involved;
warning
parents

difficult to meet in bullying and the criminal charges that could be brought: battery, assault and harassment don't ~~often~~ always mesh with the bully's behavior. } meaning what, exactly?

Had Phoebe not committed suicide, Phoebe's parents could sue both the bullies:

Kayla Narey, Sean Mulveyhill, Ashley Longe and

Flanneery Mullins as well as Flanneery's friend, Sharon

for assault and IIED. They could sue whomever

had physically threatened Phoebe (assuming the person
 / is a threat battery?

could be identified) for battery and they could

also sue the school district for negligence.

but I asked what would be your first suit.
 (Generally, assault and IIED are the

primary tort theories that parents and students

(through their parents if the student is a minor)

can ^{also} pursue against bullies. Battery is also effective

but ~~can~~ ^{is} only ~~be pursued~~ applicable in cases

where the bullying has escalated ~~to~~ to physical

threats or actual violence.

Assault is the claim most likely to succeed against other students.

The prima facie elements of assault are

1) A acts 2) intending to cause in P the apprehension

of an imminent harmful or offensive contact

with P and 3) A's act causes P to reasonably

✓ | apprehend such a contact. As we saw in

Vetter v Morgan no bodily contact is necessary

for an assault claim, only the reasonable

possibility that the threat could be carried out. In most bullying at school there is some possibility of the threat, or threats, being carried out even if, as in Phoebe's case the bullying was ^{mostly} derogatory in nature.

After all, by the time January 13, 2010 arrived the threats against Phoebe had gotten physical and her chief tormentor, Ashley, threw a drink can at her. -(that could be batling..!)

IIED is another tort claim that can be used against bullies. The conduct standard of IIED is that the behavior 1) is outrageous or beyond the bounds of decency 2) that it is

undertaken for the purpose of causing the victim emotional distress so severe that it could be expected to adversely affect his (her) physical health 3) that it causes such distress, even without the physical manifestations. These elements can be summed up as intentionally OR recklessly causing severe emotional distress to another. Most victims of bullying would likely sum up their experiences using similar terms.

As we saw in *Dickens v Puryear*, the key difference between assault and IIED is that assault ^{creates} is an immediate fear and apprehens

ITED is an indefinite future fear. In many ways Dickens v Puryear could be considered an adult bullying case because ✓ the perpetrators (sp?) had a similar relationship to their victims as many bullies have to their victims; they live in the same communities and have the ability to see their victims during regular, daily behaviors such as work or school and can appear randomly in their victim's personal space. | power dynamic matters.

The main tool that tort law brings against bullies in general isn't the claims,

it's the damages that can be awarded.

Money is a fantastic motivator. Quite ✓

simply multiple parties will step in and effectuate (how)

change once damages have been awarded.

also works
against
school w/
deep pockets
and
ability to
correct for
future
behav.
oversight
(cheapest
cost
avoider)

Parents of bullies will demand changes in the

bullies behavior. School districts will no

longer tolerate teachers standing by as bullies

torment their victims, as they did in Phoebe's

case.

In most bullying cases the school district

OK; would be liable in tort to a ~~neg~~ negligence claim.

why not
punitize?

The elements of negligence are: 1) P has

suffered an injury 2) A owed a duty to a

class of persons, including P to take care

not to cause injury of the kind suffered by

P 3) A breached that duty of care and 4)

A's breach was an actual and proximate

cause of P's injury. Bullying is an injury. No. emotional distress is the injury.

School districts owe a duty to students

to take care not to allow bullies to

cause injury to other students. Most

school districts acknowledge this duty by not dispositive of duty; duty for judge

How, exactly?
And why?

internal
stds

Rowland?
Tausoff?

Baker?

bullying. By allowing bullies to bully other

need
deeper
reasoning;
Circular

students the school districts are 'breaching

that duty. When bullies are allowed

to bully their fellow students repeatedly
their victims have been injured.

OK, didn't
expect
return to
duty

The duty aspect here is crucial and based
on the foreseeability of the specific harm
and the school districts' relationship with

Injury is
not the
bullying itself.
Q: "is
emotional
harm
foreseeable"?

their students. Bullying, unfortunately, is foresee-
able in almost every school district. While "severe"
bullying is a newer threat to school communities,

it is so common as to be foreseeable as a consequence
of having kids together in schools. Any reasonable
person would know that bullying is a problem in
schools.

Duty is also based on the school districts' relationship

with their students. Unquestionably school districts are responsible for the safety of their students. They acknowledge their general duty in many ways but the specific duty to protect their students from both physical and mental harm is manifest by security guards and school cafeterias. School district policies often spell out the duty to protect students from one another, including specific anti-bullying policies.

— why?
What is basis?

What if policy is too lax; too severe?
TJ Hooper?
Vaughn?

When those policies are violated, the school district has breached their duty to their students and that breach in a negligence claim allows plaintiffs, be they parents and/or students to seek

damages.

When tort law is used in this way to motivate school communities to step up and develop and enforce anti-bullying policies school districts can work with parents who have likewise been motivated by tort law's use of damages to create a vise with parents on one side and school districts on the other to squeeze bullies and their toxic behaviors out of schools.

Pheobe's parents could sue the school district for negligence because the school also owes a duty to parents as a class of persons to not allow their children to be injured by bullies. They

could also ^{potentially} sue the school district for wrongful death if the Mass. statute so

prox: causation would be difficult + allowed. We know from Nelson v Dolan that wrongful death statutes can be very limiting as to the damages they allow. But if Pheobers ^{successfully} parents could ~~assert~~ assert that the but/for cause of her death was the school district's inaction they may be able to pursue a wrongful death claim.

Their best claim however would be negligence as a parent of a student who was not protected by the school district.

Specifically what was breach? Should have called parents? Scheduled a mtg w/ students?

- good start, but lost steam in analysis; legal reasoning was thin, circular, & often barely related back to our facts

- what would you want to know?

Why prioritize the claims you did?

(over privacy trts, etc)

60/85