
Institution University of Utah S.J. Quinney College of Law
Course 6140-1 Torts -Brown

Instructor NA

Control Code N/A

Exam ID 6210

66.3

Count (s)	Word (s)	Char (s)	Char (s) (WS)
Section 1	89	457	548
Section 2	559	2985	3560
Section 3	2804	14171	17025
Total	3452	17613	21133

Answer-to-Question- 1

The existence of a duty in a tort case is a question of law. Duty is established by balancing three factors: the relationship between the parties (qualified duty), the reasonable foreseeability of harm to the person injured, and relevant public policy concerns. This determination is nuanced and and changes dramatically based on numerous factors and variables. Because of the challenges of making this determination, as well as the great importance of doing so correctly, the existence of duty is a legal issue best left for the judge to decide.

how so?

what challenges

2/5

Such as...?

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Answer-to-Question- 2

The rule concerning strict liability for defective products on retailers and product designers found in European Union and elsewhere is not a better rule than that embodied in the U.S. Restatement on Torts. The U.S. Restatement on Torts rule is superior for two reasons, its acknowledgement and address of the way modern day commerce differs from traditional or past practices, and for efficiency reasons.

First, the U.S. Restatement on Torts ("restatement") rule is superior because it acknowledges and addresses the way modern day commerce differs from traditional or past practices. Due to recent and rapidly changing technological shifts, (most notably the rise of the internet and ecommerce) there is a larger variety in retailers and producers of goods than ever before. Similarly, there are more avenues and outlets via which to sell products than ever before (eBay, Craigslist, Amazon, et.al.). The restatement

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rule allows for this change by allowing for liability for a more broad class of defendants than the EU rule.

The restatement rule allows the courts to evaluate individual retailers and designers on a case by case basis, as needed, and use the restatement in conjunction with common law precedent to make educated determinations about who should be held liable and who should be protected from liability. Conversely, the EU rule harshly limits liability to only one class of defendants, namely those who the EU has already identified as being "producers," which includes manufacturers of the finished product, its component parts, or any of its constituent raw materials. Not only does this narrow classification leave out retailers entirely, but it also omits product designers from liability as well. When the reality of the today's

complex, global economy is taken into account, this myopic view is clearly dangerous. ^{By granted} ^{me} ^{neg. suits} ^{harder} ^{to} blanket immunity from strict product liability to retailers and designers, the EU has removed any

responsibility they might have had to the end consumer of the goods they design and sell. This could ^{bring due} ^{to} result in irresponsible and even unsafe decisions by designers and retailers that could result in damage to

consumers, who would then be unable to recover from those responsible. The restatement rule simply ^{breach end} ^{issues} protects consumers better based on the realities of the modern economy, ^{as it provides} ^{an avenue to sue an entity the π actually came into contact,} ^{as well as allowing designer liab. for defects unknowable}

Second, the U.S. Restatement on Torts ("restatement") rule is superior for purely efficiency reasons. If ^{by retailer.} the United States followed the EU rule, the government would suddenly become responsible for a whole

new kind of regulation. Placing the burden of correctly identifying and labeling all liable producers of

goods in the entire United States of America, as well evaluating and classifying all importers of goods is

an enormous task that would be both astronomically expensive and inefficient. The restatement rule

allows the courts to evaluate individual retailers and designers on a case by case basis, as needed, and use

to use the restatement rule in conjunction with the common law to make educated determinations about

liability, which is more accurate, less time consuming overall, and significantly less expensive to tax

payers.

In conclusion, the rule concerning strict liability for defective products on retailers and product designers ^{role of contribution & indemnif. mitigates} ^{apparent unfairness}

to inspect gather info about risks

of we exactly what you're saying here...

neg. suits harder to bring due to breach end issues

as well as allowing designer liab. for defects unknowable by retailer.

found in European Union and elsewhere is not a better rule than that embodied in the U.S. Restatement on Torts. The U.S. Restatement on Torts rule is superior, both because of the way it addresses the realities of modern day commerce, and for efficiency reasons.

Nil organization of answer 7/10

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Answer-to-Question- 3

"First, how might tort law address this situation, either prospectively or retrospectively? Second, do you think tort law ought to redress these wrongs, or would they be better left to individual school regulations and/or the criminal law? Why?"

Tort law can and should address this situation, both prospectively and retrospectively. There are three basic goals of tort law: providing compensation to victims, punishment, and deterrence. Tort law can address this situation and could achieve all three of these objectives in the present case.

Compensation

Tort law can address this situation by providing compensation to the Prince family. Without question, nothing in the world can actually compensate them for the tragic loss of their sister and daughter.

Sued.

However, the absence of "true" compensatory redress is no excuse for inaction. It is highly possible (and yet admittedly contingent on facts outside of the provided fact pattern) that the Prince family suffered numerous financial costs associated with Phoebe's death, such as loss of income from not being able to

work, loss counseling for the family and specifically for Laura Prince, funeral expenses, et al. These costs could be recovered, providing some relief, however slight, ^{retrospectively} to the Prince family in their time of need.

Punishment

Tort law can address this situation ^{both prosp. & retersp.} by punishing those responsible. Based on the fact pattern, no criminal charges or even school disciplinary consequences have been brought against the girls who were identified by the District Attorney as having bullied Phoebe (except for a single one day suspension of Sharon for one incident of harassing Phoebe). Nor have any actions been taken against any other parties who may also have unconscionably contributed to the events culminating in Phoebe's death. Tort law offers an alternative means through which those responsible can be punished for their actions. ^{through steep fines / damages}

Deterrence

Tort law can address this situation ^{prospectively} by helping to prevent future occurrences of school bullying. As previously mentioned, no criminal charges or even school disciplinary consequences have been brought against the girls who were identified by the District Attorney as having bullied Phoebe (except for a single one day suspension of Sharon for one incident of harassing Phoebe). Nor have any actions been taken against any other parties who may also have unconscionably contributed to the events culminating in Phoebe's death. At present then, the message to school bullies, both at South Hadley and around the country is clear: feel free to continue your activities of harassment and violence. There will be no consequences. A similar message is present for school administrators and faculty and staff, again both at South Hadley and around the country: Go ahead and continue to turn a blind eye to school bullying. You will not be held accountable for your negligence. Tort law offers an alternative means through which those responsible can be punished for their actions, and this punishment could send a different message, one that makes it clear that school bullying is unacceptable, can lead to ghastly consequences, and that

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both bullies themselves, as well as school employees who fail to act in opposition to bullying can and have been punished. The fact that this case has already received widespread attention in the local community can help that message disseminate. If people know they could be held accountable for their actions, they might choose to act differently, thus preventing or at least mitigating future incidents of school bullying.

Finally, the question of whether or not Tort law ought to redress these wrongs, or would they be better left to individual school regulations and/or the criminal law? In the present case, the answer is clear: In light of the failure of both criminal law and school regulations, tort law not only should but must redress these wrongs.

what about future cases - all bullying or just some?

This case, the suicide of a fifteen year old girl, to escape constant school bullying, her body found by her twelve year old sister hanging dead from a scarf the younger girl had given to her sister as a christmas gift, is an ghastly, abdominal one. Evidence and witnesses of the constant, consistent bullying the girl had endured seem abundant and readily available. Yet there has been absolutely no criminal convictions or even school disciplinary consequences against the girls who were identified by the District Attorney as having bullied Phoebe (except for a single one day suspension of Sharon for one incident of harassing Phoebe). Nor have any actions been taken against the South Hadley High School employees who may also have unconscionably contributed to the events culminating in Phoebe's death. Not only have there been no convictions or disciplinary actions, but there have not been any charges filed, nor any school investigations into the incident. In short, there has been a complete failure by both criminal law and administrative measures to address this situation whatsoever. Worse still, because high school bullying is such systematic and widespread problem in today's schools, the lack of redress in this matter does not just fail to solve the problem at hand, it may potentially create or at least support future incidents of school bullying, which would result in similarly ghastly outcomes. In light of the failure of criminal law and school regulations to address this situation, the alternative means of redress provided by Tort law

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repetitive

should and [?] must be employed, regardless of your personal philosophy on when and why tort law should be used. The use of Tort law in this case could potentially provide compensation to victims, punish those responsible, and help deter future incidents of the same type.

what about other cases?

"Finally, if you were Phoebe's parents and had the emotional and financial strength to sue, whom would you sue first, and under what tort theory(ies)? Please identify any additional facts you would like to know before pursuing this case. As time is limited, prioritize your strongest arguments but address as many as you can."

I would first pursue actions ^{of what claim?} against South Hadley High School, and if possible include claims against Sharon, Ashley, Kayla, and Flannery in the same action. My reasoning for this is that in order to prove my chief tort theory against South Hadley High School, I will be articulating linked caused^s of action that I could bring against the girls. If it proved impossible to bring actions against the two groups simultaneously (remember that as a 1L I have a limited knowledge base of actual court procedure), I would first pursue South Hadley High School, and later Sharon, Ashley, Kayla, and Flannery.

multiple ds allowed w/ diff/overlappy claims

I will first examine possible causes of action against the school, beginning with my chief tort theory and moving through various other possible claims. Then I will examine possible causes of action against the girls, again by starting with my chief tort theory and moving through various other possible claims.

nice road map

Possible causes of action against South Hadley High School:

South Hadley High School would be my first priority, chiefly in order to help prevent someone else's child from suffering the same fate as my daughter.

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1. South Hadley High School is likely guilty of negligence because school officials failed in their duty

to prevent Phoebe Prince from being bullied, as well as because they failed to warn her parents of the situation.

Negligence has four prima facie elements, and all four are likely met in our case. Each will be discussed seperately.

— where? below?

A: Phoebe most likely suffered an injury (IIED) when she was repeatedly called derogatory names in person, online, and via text message, as well as when she was chased through the halls, screamed at, and threatened with physical violence by Sharon (Assault).

Phoebe was likely injured when she was the victim of the intentional infliction of emotional distress ("IIED") because she was repeatedly called names in person, online, and via text message. All three elements of IIED are likely meet because Sharon, Ashley, Kayla, and Flannery and other students likely acted in an extreme and outrageous fashion when they repeatedly called Phoebe derogatory names in person, online, and via text message, and they intended (or should have know that it was possible that) Phoebe to suffer intense emotional distress as a result of their actions, and because said actions most likely did cause Phoebe severe emotional distress, evinced by her subsequent suicide. To support the IIED claim, I would turn to *Littlefield v. McGuffey*. In *Littlefield*, a D was found guilty of IIED when he harassed a P with numerous degrading telephone calls and messages. Just like in *Littlefield*, Phoebe was also subjected to numerous degrading messages, in her case from Sharon, Ashley, Kayla, and Flannery and other students via telephone sms services, online, and in person.

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harm
possibly -
just defend
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Opposing counsel could argue against a claim of IIED by arguing that that the name calling in question was not "extreme and outrageous", part of the first prima facie element of IIED. While it is true that IIED claims have a very high bar of proof that must be meet in order to be successful, this case could likely meet that bar. In *Cheatham, v. Pohle*, (mentioned in the notes section of Tort Law: Responsibilities and Redress casebook) a D who is found guilty of IIED because he posted photos of a P having sex

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around a neighborhood with her name and contact information. While the present case arguably does not present quite as compelling evidence as this case, there are some strong corollaries between the two. The main theme of the harassment campaign against Phoebe was based on her alleged sexual promiscuity, particularly with boys who had girlfriends. For example, Ashley posted "Close your legs and stop sleeping with people's boyfriends or you will get you're a** kicked" on Phoebe's Facebook.com page. Such pages were set by default at the time (Fall 2009 - Early 2010) to be viewable by anyone, even if they were not "friends" with the person in question. If Phoebe had never modified her privacy settings, then the comment in question would have been viewable by any internet connected person in the world, certainly at least the equivalent of a neighborhood. Furthermore, while the comment and the many photos like it fall short of being a picture of Phoebe engaged in sexual activity, they do clearly suggest the same thing as in *Cheatam*: that she is engaged in promiscuous sexual activity. Taking into account that Phoebe is a fifteen year old girl and the conduct in our case is similarly extreme and outrageous to that in the *Cheatam* case.

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>DPF?

std for future bullying cases?

assault?

Phoebe was also likely injured by assault when Sharon threatened to beat her up during an incident that took place on January 8th, 2010. During lunch time at the school, Sharon screamed at Phoebe for 15 minutes, and later followed her into Latin class and "continued to threaten to beat her up". This incident likely meets all three of the prima facie elements of battery because Sharon acted, likely intending to cause Phoebe apprehension of an imminent harmful or offensive contact, and Phoebe almost certainly did feel a reasonable fear of such a contact. Opposing counsel could argue that Sharon did not actually intend to cause Phoebe apprehension of an imminent harmful or offensive contact, citing *Rankin v. R.R. Co.* where in it was held that "words alone never constitute an assault". However, unlike in *Rankin*, Sharon's words were accompanied by an "act", the prolonged screaming and the subsequent following of Phoebe into her Latin class. Furthermore, whether or not Sharon actually intended to follow through with her threat to beat Phoebe up is not essential to a claim of assault, as seen in *Vetter v. Morgan*. In that case, a D threatened a P while at a stoplight that he would remove her from her car, which was deemed an

size of crowd matters

assault even though D never actually intended to follow through. Like in *Vetter*, even if Sharon did not actually intend to follow through on her threat, she is still guilty of assaulting Phoebe. Another possible counter argument to a claim of assault against Sharon is that it could be argued that the threat was not imminent. In *Brooker v. Silverthorne*, a D threatened a P over the phone by saying "if I were there I would break your neck". The court held that threats such as this, which look towards the future, do not constitute assault. However, *Brooker* is distinguishable. In that case the threat took place over the phone and was clearly not a threat that the D could immediately act on. In our case however, Sharon was physically present in the classroom with Phoebe when the threat was made, and she could have immediately followed through and beaten her up.

because lording / persistence / actionable

condition

(hiding in bathrooms; threats getting physical).

→ picks back up?

B: South Hadley High School most likely owed a duty to Phoebe to take care to prevent her from being injured because Phoebe's relationship with the high school counselor, school nurse, and principal created qualified duties for each.

Sally Watson-Menkel, the high school counselor, likely had a qualified duty to act in some capacity to stop Phoebe from being harassed, as well as a duty to warn Phoebe's parents and the high school principal of the situation. The high school nurse also likely had a qualified duty to act in some capacity to stop Phoebe from being harassed, as well as a duty to warn Phoebe's parents and the high school principal of the situation. The high school principal also likely had a qualified duty to act in some capacity to stop Phoebe from being harassed, as well as a duty to warn Phoebe's parents of the situation. According to the school district superintendent, South Hadley High School has a no-tolerance policy regarding bullying, with disciplinary consequences that include expulsion.

how exactly? duty must be defined?

ICC... 1/15/15

In *Tarasoff v. Regents of University of California*, a school psychologist was found to have breached her duty to warn when she failed to warn a third party that one of her clients had threatened to kill a third party. Like in *Tarasoff*, if a D has a higher level degree of knowledge, skill, or experience,

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then the "reasonable person" D must use that higher level and should be judged by it. The school counselor, the nurse, and the principal each, by virtue of their position and therefore educational background and experience, should have been aware of the serious nature of school bullying and the devastating consequences it can result in. They should therefore be held to that standard, and judged accordingly. Their duty to warn can be evaluated using the seven factors of Rowland v. Christian. This evaluation would show that the foreseeability of harm, the low burden of taking action, and the enormous public policy implications outweigh any arguments against finding that they owed Phoebe a duty.

whether complaints by P rose to an actionable level

who? parents?

C: South Hadley High School most likely ^{breached} a duty owed Phoebe to take care to prevent her from being injured when they failed to take _____ ?

No action was ever taken against any of the students responsible for bullying Phoebe (except for a single one day suspension), and Phoebe's parents were never notified of the bullying situation, which means that South Hadley High School likely ^{breached} their duty to Phoebe and her parents. This ^a breach was likely one of negligent and imprudent conduct, as seen in *Myers v. Heritage Enterprise*, but in light of the school district's zero tolerance bullying policy, could arguably be seen as strict liability negligence, as seen in *Pingaro v. Rossi*.

don't follow

internal policies don't create strict liability!

D: South Hadley High School's ^a breach was likely an actual and proximate cause of Phoebe's injuries because if they had acted, her suicide could have been prevented.

Phoebe Prince was a child, a mere fifteen old girl who consistently called out for help by repeatedly seeing the high school counselor and nurse, and complaining to an assistant principal. If any of these individuals had done something, anything, to try to address her untenable bullying situation, her suicide could have been avoided. Suicide is a last ditch effort, taken by the desperate when they feel they have no other recourse available to escape challenging times. Phoebe needed help, and she asked for it. She

How?

asked for it from people who had a qualified duty to provide it. But they didn't. Now she is dead at her own hand, and no one has been held accountable for it. South Hadley High School is likely guilty of negligence because school officials failed in their duty to prevent Phoebe Prince from being bullied, as well as because they failed to warn her parents of the situation.

specifically, what kind of conduct to satisfy duty / non-breach?

Possible causes of action against Sharon, Ashley, Kayla, and Flannery:

In addition to the causes of action articulated above:

Phoebe likely suffered battery when Ashley hurled a empty energy drink at her.

Phoebe was likely defamed when Ashley posted the comment on Facebook.com (contigent on facts outside those provided).

Phoebe was also likely painted in a false light when Ashley posted the comment on Facebook.com (contigent on facts outside those provided).

- Your organization was so tight, then you lost me a A: j didnt follow from previous P

69/85

- lost strength of fact/legal analysis at end too