

Tort actions

Law



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Week 3 Scenario The tort actions I see in this scenario are the tort of battery (an intentional tort), intentional infliction of emotional distress and the tort of negligence. The potential plaintiffs are Malik and Daniel, who are also the potential defendants in this scenario. I mention that both parties are defendants because there was negligence on behalf of Malik and intentional harm on behalf of Daniel. The elements that I found for each of the plaintiffs claims are as follows: If Malik had not accidentally spilled the beer on Ruben (Daniels son), Daniel would not have got fired from his job, being accused of giving alcohol to a minor. Also, if it were not for Malik following Daniel and his son to the parking lot and pointing a gun at them, to scare them, there would be no intentional infliction of emotional distress. In the case of Malik vs Daniel, Daniel pushing him out of anger is an intentional tort of battery, with causation “ but-for” tort of negligence. If Daniel had not pushed Malik, Malik would not have fallen, grabbing the side rail, fall and hit his face on the ground causing his two front teeth to be knocked out. In addition, Daniel shot Malik in defense, as Malik pulled a gun on him and his son. There are only two defenses that either party could use as a defense in court; Assumption of Risk and Comparative Negligence. I feel that in the case of the plaintiff Daniel Vs Malik (defendant), the courts would find in the defendants favor, stating it was comparative negligence and both parties had equal responsibility. Daniel had the duty to take care of his child and rid him of the beer smell on his clothes and that Malik had the duty to be more careful when drinking alcohol, but would owe something to Daniel for him being fired from his job, which is proximate cause. There for, neither party would receive full damages in regards to this claim a jury would decide who has more fault than the other does and amount recovered would be less. In the <https://assignbuster.com/tort-actions/>

case of Malik (plaintiff) Vs Daniel, I feel the courts would find in the plaintiffs favor as he had a considerable amount more damages from being shot and the defendant (Daniel) started the physical fight. The courts would award him based on the comparative negligence defense and assumption of risk defense. He pulled out his gun to scare Daniel, knowing the risk could he could be killed if Daniel chose to defend himself and his child. Malik would recover some damages for medical bills, lost wages, but not pain and suffering as he brought this on himself.

Scenario 3 The tort actions that see in this scenario are defamation (slander), negligence and tort of battery. The potential plaintiffs are Eric Vs Dependable Auto (Manager) and Raul Vs Dependable Auto (Manager). The only defendant that I find in this scenario is Dependable Auto. In regards to Eric, Dependable Auto's manager is the defendant and liable because she is the direct cause for the defamation of character. In regards to Raul, Dependable Auto and the manager can both be held liable, because the incident happened on Dependable Auto's property and by one of their employees, they can be held liable for their employee conduct or they can fire the manager and she will be liable alone for her actions. The elements that I found for each of the plaintiffs claims are as follows: In regards to Eric Vs Dependable Autos manager, when other salespeople asked about what happened, the manager told them that Eric was fired for stealing. This is slander and defamation of character, as the statement was about his honesty, reputation and integrity, it was directed at Eric and the other employees and provided damages for lost wages and being fired. In regards to Raul Vs Dependable Auto or/and the manager, the manager intended to shoot the staple gun at Raul, even though the intention was to scare him, damages resulted in him being shot in his eye causing

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permanent blindness. The two defenses that could be used to prove their case would be that for the defamation suit, what was said was the truth, regardless of the harm that resulted from the statement. In addition, contributory negligence, the accident and damages resulted from the combined negligence of both parties, Raul and the manager. Assumption of risk could also be used as a defense, as it could be proven that Raul picketing in front of the establishment, meant that he knew the potential risks of injury, from his conduct, yet decided to go forward anyway. I feel the courts would find in the plaintiffs (Eric) favor and award damages due to the lost wages and defamation. The plaintiff may be able to recover punitive damages, if the courts find there was a high level of carelessness on the defendants (manager) part. I feel the courts would also find in favor of the plaintiff (Raul), due to the intentional tort of battery as the managers intention was to fire the staple gun at Raul and ended up shooting him in the eye. The court would also award not only punitive damages to the plaintiff, but also damages for medical bills, lost wages, pain and suffering, and emotional distress. Scenario 4 The tort actions I see in this scenario are the tort of battery (an intentional tort), intentional infliction of emotional distress and the tort of negligence. The plaintiffs are the man and his wife Vs Lee (Buy Mart) and Lee Vs Buy Mart (Security guard). The defendants are Lee, Buy Mart and the security guard. Lee is a defendant due to his intentional actions of loading the rifle and intentionally shooting the woman (torts of negligence: duty, breach of duty, causation, proximate cause and damages). Buy Mart as the harm occurred in their establishment, an employee sold the gun, and the security guard as Lee could sue him for damages and emotional distress. The elements that I found for each of the plaintiffs claims are as

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follows: Man and wife Vs Lee; Lee intentionally shot the woman with a rifle and due to Lees actions, seeing his wife shot caused the man to have a heart attack. Lee Vs Security guard; the guard in the heat of the moment and anger kicked Lee while he was unconscious, breaking his ribs, threatened him when Lee asked to seek medical attention saying “ if you don’t shut up, I will break more of your ribs” and also denying him his right to seek medical attention. There is no defense for Lee, regarding to the shooting of the woman in Buy Mart. In regards to Lee’s case against the security guard, the defendant could claim assumption of risk, stating that since Lee already shot one person and was in the action of firing another one, it was his duty to help apprehend Lee. Moreover, that he was unaware of Lee being unconscious, he was just aware of the struggle between the employee and Lee. Lee Vs Security guard; I feel that the courts would find in favor of the defendant as the plaintiff intentionally shot a woman and throw out the case. In regards to the Man and his wife Vs Lee, I feel the courts will find in the plaintiffs favor, due to the torts of negligence and intentional harm. All of the elements of the torts of negligence have been established, including proximate cause meaning if it were not for the woman being shot and her husband witnessing, he would not have had a heart attack. I also feel that the courts would award the plaintiffs damages for medical bills, pain and suffering, lost wages (if any), emotional distress and punitive damages. Works Cited Jennings, M. M. (2008). Business: Its Legal, Ethical and Global Environment, 8th ed. Mason: Cengage Learning.