

P R O F E S S O R B E N A L B A
SAMPLE TORTS EXAM QUESTION AND ANSWER

QUESTION

Rana asked Bobbi if she could borrow her SUV in order to transport her used furniture to New Start, a local non-profit. Bobbi hesitated to say yes, because she knew of Rana's propensity for speeding and her numerous prior traffic violations. Despite her reservations, however, because she believed in the mission of New Start, Bobbi agreed to let Rana use her SUV and gave her the keys.

That night, Rana drove carefully and dropped off her furniture at the New Start resale store. Eager to get home, she sped as much as 25 miles over the speed limit on the return drive. While rounding a curve on I-55, she lost control of the SUV, which tumbled off a ramp and down a hill, crashing into a small tree.

Sean happened to witness the incident and ran down the hill to help, but in doing so, he stumbled in a hole and severely sprained his ankle. Rana emerged from the SUV dazed but without a scratch. The SUV, however, was crumpled.

An ambulance took Sean to the hospital, where the E.R. doctor taped up his ankle, gave him crutches, and prescribed 12 weeks of physical therapy. The sprain prevented Sean from opening his new home remodeling business for another three months.

1. Can Sean recover his medical and therapy costs? From whom? Explain.
2. Can Sean recover the income lost from the three-month delay in opening his business? From whom? Explain.
3. Discuss any issues of joint and several liability as applied to Sean's claims.

ANSWER

1. The first issue is whether Rana or Bobbi can be held liable to Sean for the injuries he suffered while attempting to rescue Rana. To prove a *prima facie* case of negligence, a plaintiff must show that (1) defendant had a duty of reasonable care to protect foreseeable plaintiffs in the zone of danger; (2) that defendant breached that duty; (3) causation (both causation in fact and proximate cause); and (4) resulting damages.
 - a. **Sean v. Bobbi (negligent entrustment).** Sean has a claim against Bobbi, the owner of the SUV driven by Rana, for negligent entrustment. A motor vehicle owner has a duty not to allow a known negligent or reckless driver to use the vehicle. Here, despite knowing that Rana was a habitual speeder with a record of numerous traffic violations, Bobbi breached this duty by entrusting (i.e., lending) Rana her SUV. Therefore, Bobbi is liable for any foreseeable damages caused by Rana's driving, which would reasonably

include injuries suffered by rescuers coming into the area where the vehicle driven by Rana was stopped or stalled as a result of her negligence or recklessness.

b. **Sean v. Rana (negligence).** Sean has a claim against Rana, the SUV driver, for negligence. As a driver, Rana had a duty to drive safely, which she breached by speeding. Violation of a speeding statute will be deemed evidence of negligence in most states. Rana's speeding was both the cause in fact and the proximate cause of Sean's injuries under the doctrine of "danger invites rescue." This doctrine recognizes that a rescuer – a person voluntarily coming to the aid of another – may likely injure himself while attempting to aid a tortfeasor. Consequently, the tortfeasor is liable for injuries that a rescuer suffers in attempting a rescue, regardless of whether they occurred in the zone of danger. Here, after seeing Rana's vehicle crash, Sean voluntarily came to her aid and injured himself in the process, for he was running down a hill, not knowing whether she had been seriously injured. His injuries were foreseeable under the "danger invites rescue" doctrine. Thus, the chain of causation is not broken here, and Rana may be held liable for Sean's injuries suffered during his attempt to rescue her, even though it turned out that she was not actually hurt.

2. **Recovery of damages.** The second issue is whether Sean can recover damages for the economic losses he suffered as a result of Rana's or Bobbi's negligence described above. A plaintiff in a negligence claim must prove actual damages and economic losses. Medical expenses (such as doctor and hospital bills) are quantifiable and therefore recoverable. Sean would be able to recover from Rana or Bobbi for his medical expenses and for the pain and suffering arising from his severe ankle sprain. Lost wages are recoverable if it was foreseeable that they would occur as a result of the negligent conduct.

Here, it is foreseeable that Sean would be unable to start and work in a home remodeling business – a physically demanding occupation – because of his injury. The business loss claimed, however, seems speculative. Because his remodeling business was new with no history of profits, Sean cannot prove with reasonable certainty the amount of profits expected or lost.

3. **Joint and severable liability.** The third issue is whether Rana and Bobbi can be held jointly and severally liable for Sean's injuries. Where two or more tortfeasors act in concert or cause indivisible injury to a plaintiff, all defendants are jointly and severally liable for the full amount of damages. Here, Sean's ankle sprain and resulting damages are the result of the negligence of both Rana and Bobbi and thus not capable of apportionment between them. Therefore, because Sean is not at fault, he can pursue both defendants or either of them for the full amount of his damages. A court would then apportion percentages of fault for negligence between the co-defendants.