

Torts: Negligence: Landlord Duty, Duty to Rescue, Psychotherapist Duty, Eggshell Plaintiff Rule

Question 1(a) – May Susan recover damages for physical injuries she suffered in Ann’s attack from University?

Identify that **negligence** requires a showing of (1) duty, (2) breach, (3) causation, and (4) damages.

Identify, explain, and conclude that University owed a duty because **landlords owe a duty** to maintain common areas.

Identify, explain, and conclude that University breached its duty and did not act reasonably when it failed to repair the lock for four days.

Identify, explain, and conclude that University was the actual cause of Susan’s injuries, because but for the lock being broken Ann would not have been able to break in and attack Susan.

Identify, explain, and conclude that University was the proximate cause of Susan’s injuries because it was foreseeable that if the lock wasn’t repaired someone could break in and commit a crime.

Identify, explain, and conclude that Susan suffered harm because she experienced physical and mental symptoms.

Conclude that Susan can recover damages from University because all the elements of negligence were met.

Question 1(b) – May Susan recover damages for physical injuries she suffered in Ann’s attack from Jim?

Identify that generally there is no **duty to rescue unless** a person voluntarily undertakes a rescue and fails to act reasonably or places the victim in a worse position.

Explain and conclude that Susan most likely cannot recover from Jim because his conduct did not exacerbate her injuries.

Question 1(c) – May Susan recover damages for physical injuries she suffered in Ann’s attack from Ann’s Psychiatrist?

Identify that a **therapist** who becomes aware that her patient presents a specific, credible threat of physical violence to others may have an affirmative duty to warn the intended victim.

Explain and conclude that Susan cannot recover damages from Ann’s psychiatrist because Ann did not make any specific credible threats of violence.

Question 2 – Assuming that any party is found liable to Susan, may she also recover damages from that party for the PTSD symptoms she is experiencing?

Identify that, according to the **eggshell plaintiff rule**, a defendant is liable for the full extent of the injury if the type of injury was foreseeable, even if the scope of the injury was not foreseeable.

Explain and conclude that University is liable for the full extent of Susan’s injuries because Susan’s injuries were foreseeable because it is foreseeable that someone would suffer the mental and physical symptoms of PTSD – including insomnia, anxiety, rapid breathing, nausea, muscle tension, and sweating – as a result of being physically attacked.

Use this Grid to self-assess your essay response. Award your response a 0 or 1 depending on whether your answer includes the statement in each box below. Your statements do not need to exactly match the statements provided here. Instead award your response a “1,” if your response does the following:

- Identifies the legal buzz word(s) in the rule and provides a general definition(s); and
- Explains how the facts match with the rule statement(s) using explicit links (i.e., rule + “is satisfied/not satisfied” + because + facts).

Topic: Torts
Sub-Topics: Negligence: Landlord Duty, Duty to Rescue, Psychotherapist Duty; Eggshell Plaintiff Rule

Question 1(a)	May Susan recover damages for physical injuries she suffered in Ann’s attack from University?	
Issue: Q1(a) Negligence		0 or 1
Rule	Negligence requires a showing of (1) duty, (2) breach, (3) causation, and (4) damages.	
Sub-Issue: Landlord Duty		0 or 1
Rule	Landlords need to maintain common areas of a building with reasonable care, effectively treating lessees in the building as invitees to the common areas.	
Application	Here, University owed Susan a duty to maintain common areas of the building with reasonable care as a landlord because she was the resident of a dormitory maintained by University.	
Conclusion	Therefore, University owed Susan a duty.	
Sub-Issue: Breach		0 or 1
Rule	A defendant has breached the duty of care when the defendant has failed to act with ordinary care or as a reasonably prudent person would under the circumstances.	
	A reasonably prudent person takes precautions to avoid foreseeable risks.	
Application	University breached its duty of care and failed to act as a reasonably prudent landlord because it failed to repair a broken deadbolt lock for four days, which a reasonable landlord would have done sooner as it is foreseeable that if a lock is broken someone could break in and commit a crime.	
Conclusion	Therefore, University breached its duty.	
Sub-Issue: Causation		0 or 1
Rule	The defendant’s actions must be both an actual and proximate cause of the plaintiff’s injury.	
	Actual cause occurs when but for the defendant’s actions the plaintiff would not have suffered the harm.	

Rule <i>(continued)</i>	Proximate cause requires a showing that the harm was foreseeable and that there were no superseding causes.	
Application	Here, University was the actual cause of Susan’s injuries because but for their failure to repair the lock Ann would not have been able to enter the dormitory and attack Susan.	
	University was the proximate cause of Susan’s injuries because it was foreseeable that if a lock was broken, someone could break in and commit a crime.	
Conclusion	Therefore, University actually and proximately caused Susan’s injuries.	
Sub-Issue: Damages		0 or 1
Rule	A plaintiff must suffer some harm such as personal injury or property damage to prove negligence.	
Application	Here, Susan suffered damages because she incurred physical injuries from the attack and began to experience mental and physical symptoms (e.g., insomnia, anxiety, rapid breathing, nausea, muscle tension, and sweating) the next day.	
Conclusion	Therefore, Susan suffered damages.	
	Therefore, because all the required elements of negligence are met, Susan can recover damages from University for the injuries she suffered as a result of the attack.	

Question 1(b)	May Susan recover damages for physical injuries she suffered in Ann’s attack from Jim?	
Issue: Q1(b) Duty to Rescue		0 or 1
Rule	See rule above for negligence. (Repeated rule – credit for rule only once)	0
	Generally, there is no duty to rescue or to control a third party’s conduct unless the defendant has voluntarily undertaken the rescue.	
	In some jurisdictions, a person who initially undertakes a rescue may cease acting so long as the endangered person is not left in a worse position than she would have been in had the undertaking never been initiated.	
	This is contrary to the majority view, which requires a person undertaking a rescue to act reasonably.	
Application	Here, Jim undertook to rescue Susan because he told her he would go for help right now, and then he closed the door to the library, making it less likely that someone else would pass by and see Susan.	
	If the jurisdiction requires a person undertaking a rescue to act reasonably, it is likely that Jim did not act reasonably because he left Susan in the library with the door closed and did not try to get help after he found the security office closed.	

Application (continued)	If the standard requires that the endangered person is not left in a worse position, Jim likely also breached that duty because Jim’s closing the library door made it less likely that anyone else would come to Susan’s aid, meaning that she was left in a worse position.	
	However, Jim’s action wasn’t the actual or proximate cause of Susan’s injuries because there is no indication that Susan suffered worse injuries while waiting for Jim to get help, and she was able to walk herself to the hospital an hour later.	
Conclusion	Therefore, Susan cannot recover damages from Jim.	

Question 1(c)	May Susan recover damages for physical injuries she suffered in Ann’s attack from Ann’s Psychiatrist?	
Issue: Q1(c) Psychotherapist Duty		0 or 1
Rule	See rule above for negligence. (repeated rule – credit for rule only once)	0
	A therapist who becomes aware that her patient presents a specific, credible threat of physical violence to others may have an affirmative duty to warn the intended victim.	
Application	Here, Ann did not make a specific threat because she did not specifically discuss any form of violence or any specific potential victim when she said she “was going to make sure” that former University classmates who were “cheaters” got “what was coming to them for getting the good grades I should have received.”	
	Additionally, her threats were not credible as she had no history of violent behavior.	
	Ann’s psychiatrist did not have an affirmative duty to warn Susan because Ann made no specific, credible threat of physical violence.	
Conclusion	Therefore, Susan cannot recover damages from Ann’s psychiatrist.	

Question 2	Assuming that any party is found liable tow Susan, may she also recover wdamages from that party for the PTSD symptoms she is experiencing?	
Issue: Q2 Eggshell Plaintiff Rule		0 or 1
Rule	A defendant is liable for the full extent of the injury if the type of injury was foreseeable, even if the scope of the injury was not foreseeable.	
	This is true even when the plaintiff has a preexisting condition or sensitivity that exacerbates the injury.	
Application	Here, Susan’s injury was foreseeable because it is foreseeable that someone would suffer the mental and physical symptoms of PTSD – including insomnia, anxiety, rapid breathing, nausea, muscle tension, and sweating – as a result of being physically attacked.	

Application <i>(continued)</i>	University is liable for the full extent of Susan’s injuries, even though one might not expect symptoms so severe that they would cause the person to drop out of school, because Susan had a pre-existing condition that exacerbated her injuries in that she suffered from PTSD as a result of a previous robbery, and Ann’s attack triggered her PTSD symptoms.	
Conclusion	Therefore, Susan can recover damages for the PTSD symptoms she is experiencing.	

Organization and Structure	0 or 1
Response organized in [HRAC, IRAC, CRAC] format with separate paragraphs.	
Response includes Headings. Document is neat and legible.	
Response includes adequate spacing (white space), or paragraphs are indented or set off by extra space.	

[39] Points Total
[0 - 21] = Level 1 below passing
[22 - 29] = Level 2 near passing
[30 - 39] = Level 3 passing or above passing

Question 1(a) – University Liability for Negligence**Negligence**

Negligence requires a showing of (1) duty, (2) breach, (3) causation, and (4) damages.

Duty

Landlords need to maintain common areas of a building with reasonable care, effectively treating lessees in the building as invitees to the common areas.

Here, University owed Susan a duty to maintain common areas of the building with reasonable care as a landlord because she was the resident of a dormitory maintained by University.

Therefore, University owed Susan a duty.

Breach

A defendant has breached the duty of care when the defendant has failed to act with ordinary care or as a reasonably prudent person would under the circumstances. A reasonably prudent person takes precautions to avoid foreseeable risks.

University breached its duty of care and failed to act as a reasonably prudent landlord because it failed to repair a broken deadbolt lock for four days, which a reasonable landlord would have done sooner as it is foreseeable that if a lock is broken someone could break in and commit a crime.

Therefore, the University breached its duty.

Causation

The defendant's actions must be both an actual and proximate cause of the plaintiff's injury. Actual cause occurs when, but for the defendant's actions, the plaintiff would not have suffered the harm. Proximate cause requires a showing that the harm was foreseeable and that there were no superseding causes.

Here, University was the actual cause of Susan's injuries because, but for their failure to repair the lock, Ann would not have been able to enter the dormitory and attack Susan.

University was the proximate cause of Susan's injuries because it was foreseeable that, if a lock was broken, someone could break in and commit a crime.

Therefore, University actually and proximately caused Susan's injuries.

Damages

A plaintiff must suffer some harm, such as personal injury or property damage, to prove negligence.

Here, Susan suffered damages because she incurred physical injuries from the attack and began to experience mental and physical symptoms (e.g., insomnia, anxiety, rapid breathing, nausea, muscle tension, and sweating) the next day.

Therefore, Susan suffered damages.

Therefore, because all the required elements of negligence are met, Susan can recover damages from University for the injuries she suffered as a result of the attack.

Question 1(b) – Jim’s Liability: Duty to Rescue

See rule above for negligence.

Generally, there is no duty to rescue or to control a third party’s conduct unless the defendant has voluntarily undertaken the rescue. In some jurisdictions, a person who initially undertakes a rescue may cease acting so long as the endangered person is not left in a worse position than she would have been in had the undertaking never been initiated. This is contrary to the majority view, which requires a person undertaking a rescue to act reasonably.

Here, Jim undertook to rescue Susan because he told her he would go for help right now, and then he closed the door to the library, making it less likely that someone else would pass by and see Susan. If the jurisdiction requires a person undertaking a rescue to act reasonably, it is likely that Jim did not act reasonably because he left Susan in the library with the door closed and did not try to get help after he found the security office closed. If the standard requires that the endangered person is not left in a worse position, Jim likely also breached that duty because Jim’s closing the library door made it less likely that anyone else would come to Susan’s aid, meaning that she was left in a worse position. However, Jim’s action wasn’t the actual or proximate cause of Susan’s injuries because there is no indication that Susan suffered worse injuries while waiting for Jim to get help, and she was able to walk herself to the hospital an hour later.

Therefore, Susan cannot recover damages from Jim.

Question 1(c) – Liability of Ann’s Psychiatrist: Psychotherapist Duty

See rule above for negligence.

A therapist who becomes aware that her patient presents a specific, credible threat of physical violence to others may have an affirmative duty to warn the intended victim.

Here, Ann did not make a specific threat because she did not specifically discuss any form of violence or any specific potential victim when she said she “was going to make sure” that former University classmates who were “cheaters” got “what was coming to them for getting the good grades I should have received.” Additionally, her threats were not credible as she had no history of violent behavior. Ann’s psychiatrist did not have an affirmative duty to warn Susan because Ann made no specific, credible threat of physical violence.

Therefore, Susan cannot recover damages from Ann’s psychiatrist.

Question 2 – Damages for PTSD: Eggshell Plaintiff Rule

A defendant is liable for the full extent of the injury if the type of injury was foreseeable, even if the scope of the injury was not foreseeable. This is true even when the plaintiff has a preexisting condition or sensitivity that exacerbates the injury.

Here, Susan's injury was foreseeable because it is foreseeable that someone would suffer the mental and physical symptoms of PTSD – including insomnia, anxiety, rapid breathing, nausea, muscle tension, and sweating – as a result of being physically attacked. Ann is liable for the full extent of Susan's injuries, even though one might not expect symptoms so severe that they would cause the person to drop out of school, because Susan had a pre-existing condition that exacerbated her injuries in that she suffered from PTSD as a result of a previous robbery, and Ann's attack triggered her PTSD symptoms.

Therefore, Susan can recover damages from University for the PTSD symptoms she is experiencing.