TORTS CHECKLIST

Most Torts questions are party-oriented problems. Therefore, the best way to approach a Torts problem is to examine the parties in the lawsuit and quickly determine the nature of the injury suffered by the plaintiff and the action (or inaction) of the defendant which caused the injury to the plaintiff. You will then be able to focus on the appropriate Tort(s) in issue.

I. Intentional torts: Each intentional tort requires a volitional act done with the requisite intent which is the cause of the resulting harm suffered by the plaintiff.

A. Potential torts when the plaintiff suffers injury to his/her body:
   1. Assault.
      a. Did the defendant engage in a volitional act?
      b. Did the defendant intend to place the plaintiff in apprehension of an immediate battery?
      c. Did the actions of the defendant cause the harm to the plaintiff?
      d. Did the plaintiff suffer reasonable apprehension of an immediate battery?
   2. Battery.
      a. Did the defendant engage in a volitional act?
      b. Did the defendant intend to touch the plaintiff?
      c. Did the actions of the defendant cause the harm to the plaintiff?
      d. Did the plaintiff suffer a harmful or offensive touching?
   3. False imprisonment.
      a. Did the defendant engage in a volitional act?
      b. Did the defendant intend to confine or restrain the plaintiff within a bounded area?
      c. Did the actions of the defendant cause the harm to the plaintiff?
      d. Was the plaintiff confined?

B. Potential torts when the plaintiff suffers injury to his/her emotions:
   1. Was the emotional distress associated with a separate tortious injury to the plaintiff’s body? If so, then recovery awarded under the separate tort. Otherwise:
   2. Intentional infliction of emotional distress.
      a. Did the defendant engage in a volitional act?
      b. Did the defendant intend to cause severe emotional distress or recklessly disregard that severe emotional distress might occur?
      c. Did the actions of the defendant cause the harm to the plaintiff?
      d. Did the plaintiff suffer severe emotional distress?
C. Potential torts when the plaintiff suffers injury to his/her property:

1. Injury to real property:
   a. Trespass to land.
      1) Did the defendant engage in a volitional act?
      2) Did the defendant intend to cause a physical invasion of the plaintiff’s land? (Note: intent to trespass not required.)
      3) Did the actions of the defendant cause the harm to the plaintiff?
      4) Did the plaintiff suffer a physical invasion of his/her land?
   b. Nuisance
      1) Private nuisance.
         a) Did the defendant engage in a volitional act?
         b) Did the defendant intend to cause a substantial and unreasonable interference with the plaintiff’s use and enjoyment of his/her land? (Note: defendant can also be liable in negligence or strict liability.)
         c) Did the actions of the defendant cause the harm to the plaintiff?
         d) Did the plaintiff suffer a substantial and unreasonable interference with the use and enjoyment of his/her land?
      2) Public nuisance.
         a) Did the defendant engage in a volitional act?
         b) Did the defendant intend to unreasonably interfere with the health, safety, or property rights of the public?
         c) Generally, only a representative of the public can sue to abate a public nuisance. However, did the plaintiff suffer damage different in kind from those inflicted on the public?

2. Injury to personal property:
   a. Conversion.
      1) Did the defendant engage in a volitional act?
      2) Did the defendant intend to do the act which caused the conversion?
      3) Did the actions of the defendant cause the harm to the plaintiff?
      4) Did the plaintiff suffer a destruction of or serious and substantial interference with his/her chattel?
      5) What is the available remedy?
   b. Trespass to chattels.
1) Did the defendant engage in a volitional act?
2) Did the defendant intend to do the act which caused the interference? (Note: intent to interfere not required.)
3) Did the actions of the defendant cause the harm to the plaintiff?
4) Did the plaintiff suffer an interference with his/her chattel?
5) What is the available remedy?

D. Damages
1. If the plaintiff suffered personal injury:
   1. What are the recoverable general damages?
   2. Are there any special damages that can be established?
2. If the plaintiff suffered property damage:
   1. Can the plaintiff recover the replacement value or market value for destruction of the property?
   2. Can the plaintiff recover the diminution in value or cost of repair for damages to property?
   3. Can the plaintiff recover the rental value or repair value for injuries caused by the defendant’s trespass?
3. Can the plaintiff recover punitive damages?

E. Privileges and defenses to intentional torts
1. Consent
   a. Did the plaintiff either expressly or impliedly consent to the defendant’s action?
   b. Did the defendant’s actions exceed the scope of the consent?
2. Defenses
   a. Self-defense
      1) Did the defendant reasonably believe that he/she was under imminent and unprivileged attack?
      2) Did the defendant use reasonable force in response?
   b. Defense of others
      1) Did the defendant reasonably believe that another person was under imminent and unprivileged attack?
      2) Did the defendant use reasonable force in response?
   c. Defense of property
      1) Harm to property: Did the defendant use reasonable non-deadly force to prevent harm to his/her property?
      2) Recover real property: May the defendant use force to recover wrongfully dispossessed land?
      3) Recover personal property
         a) Was the defendant tortiously dispossessed of personal property?
         b) Must the defendant first make a demand for
return of the property?

c) Did the defendant use reasonable non-deadly force to recover the property?

3. Authority
   a. Can the defendant claim the privilege to arrest the plaintiff?
   b. Can the defendant claim the shopkeeper’s privilege to detain the plaintiff?
   c. Can the defendant claim the right to use reasonable force to maintain discipline?

4. Necessity
   a. Private necessity: can the defendant injure the property of another to avoid substantially greater harm to himself/herself or his/her property?
   b. Public necessity: can the defendant injure the property of another to avoid substantially greater harm to the public?
Hypothetical No. 1

Dina, aged sixteen, lives at home with her mother, Mary, in a state where the age of majority is eighteen. Mary is aware that Dina has recently exhibited a sometimes violent and delusionary nature diagnosed as schizophrenia, and has attacked persons in the neighborhood. Medication that can control Dina’s behavior has been prescribed, but without Mary’s knowledge Dina has stopped taking it. A week after Dina stopped taking her medication, she approached a neighbor, Paul, as he walked along the sidewalk fronting Mary’s home. When she was face to face with Paul, Dina, without provocation, gestured threateningly and screamed, “I know you’re out to get me and I’m going to get you first,” and then strode away. Paul, who had no knowledge of Dina’s mental illness, phoned Mary about the incident. Mary told Paul that “Dina has sometimes made threats to others, but I do not think she will try to hurt you and I assure you that this will not happen again.” Paul believed Mary’s assurances and, for that reason, did not seek to avoid Dina. Mary questioned Dina about the incident, scolded her, and asked if Dina was taking her medication. When Dina said she was, Mary did not pursue the matter. Two days after Dina confronted Paul, Dina saw him raking leaves which had fallen into the street fronting their adjoining homes. Dina got on her bicycle and rode it as rapidly as she could directly at Paul. Although Dina swerved away from Paul at the last moment, Paul reacted by diving to one side. He struck his head on the curb and suffered a severe concussion and facial injuries. Paul has sued Dina and Mary, alleging tortious causes of action.

Does Paul have any intentional tort claims against Dina? Discuss.
Hypothetical No. 1
Outline of Issues

I. Paul v. Dina

A. Assault: Volitional act done with the requisite intent which causes the plaintiff to suffer reasonable apprehension of an immediate battery

1. Gesture and Scream
   a. Volitional Act: Dina’s gesture and scream
   b. Intent: Can be inferred from actions coupled with statement
   c. Causation: Clear from facts
   d. Apprehension of Immediate Battery: Was Paul apprehensive? Did he telephone Dina’s mother out of fright? Was he concerned about an immediate battery?

2. Bicycle Incident
   a. Volitional Act: Dina’s riding her bicycle at Paul
   b. Intent: Can be inferred from actions
   c. Causation: Clear from facts
   d. Apprehension of Immediate Battery: Paul’s diving out of the way show apprehension. Was it reasonable, in light of Mary’s assurances that Dina would not hurt Paul?

B. Battery: Volitional act done with the requisite intent which causes the plaintiff to suffer a harmful or offensive touching

1. Bicycle Incident
   a. Volitional Act: Dina’s riding her bicycle at Paul
   b. Intent: Dina’s actions may have been intended only to scare Paul, but her intent to commit an assault can be transferred into the intent for battery
   c. Causation: Clear from facts
   d. Harmful or Offensive Contact: The contact with the curb, which caused Paul to suffer a concussion and facial injuries, would clearly be harmful. The fact that Dina never touched Paul is irrelevant.

C. Defenses

1. Mental Disease: Can Dina’s mental illness be used as a defense? Only if she could show that it prevented her from forming the requisite intent or acting volitionally.

2. Self-Defense: Dina’s first statement to Paul shows that she believed Paul was out to get her. Was this belief reasonable?
Hypothetical No. 2

Smith manufactures and sells component electrical parts. On August 1, Jones, who assembles and sells precision instruments, mailed to Smith a letter which reads as follows: “I will pay $4.50 per unit for 500 of your X2 switches. Your catalog price on these is $5, but I assume you give a discount on a large order such as this. Also, I have three thousand shafts which must be machined to quarter inch diameters, tolerances not to exceed about one thousandth of an inch. I will pay $1 per unit on this work. Delivery on both items by September 1.”

Smith replied by return mail: “Your order and offer accepted. The X2 switches will be packed and shipped for arrival about August 20. You are correct in assuming a quantity discount, but it is 5% rather than 10%, so the switches will be invoiced at $4.75. We have reserved time in our shop after August 15 for the machining, but we must have the shafts by the 15th if they are to be ready by September 1. Tolerances on our lathes cannot be guaranteed beyond two thousandths of an inch.”

Jones received this reply on August 7 but did not respond. The switches were shipped on August 14 and arrived on the 20th.

On August 17, after the Smith shop had been idle for two days awaiting the shafts, Smith called Jones to ask about them. Jones informed Smith that the shafts had been sent to another shop for machining at a lower price, and that Jones would not take the switches because the price was too high.

Jones has paid Smith nothing and has refused to accept delivery of the switches.

Jones had the machining of the shafts done by Black, under a contract calling for tolerances “not to exceed two thousandths of an inch.”

What are Smith’s rights against Jones? Discuss.
Hypothetical No. 2
Outline of Issues

I. Smith v. Jones

A. X2 Switches

1. **Applicable Law**: Since a sale of goods is involved, the UCC will apply.

2. **Mutual Assent**
   a. **August 1 Letter**: Seems to be sufficient as to intent and content to be an offer.
   b. **Smith’s Reply**: Acceptance containing different price term. UCC 2-207 covers such a situation.
      1) Was the acceptance expressly conditional on assent to the additional or different terms?
      2) Are both parties merchants?
      3) Was the offer expressly limited to acceptance of terms of the offer?
      4) Did the offeror object to the new terms within a reasonable time?
      5) Do the new terms materially alter the contract?

3. **Consideration**: Clear from facts.

B. Machining of the Shafts

1. **Applicable Law**: Since a service is involved, the modern common law will apply.

2. **Mutual Assent**
   a. **August 1 Letter**: Seems to be sufficient as to intent and content to be an offer.
   b. **Smith’s Reply**: Under “mirror image” rule, Smith’s reply would be a counteroffer. Was the counteroffer accepted?