Mind Music – Or What Should Be Going Through Your Mind as You Read the Fact Pattern

To improve skills of essay writing you need to work on fact-identification and issue-analysis. One way to expand these skills is to develop the mindset of "critical reading." This is easier to demonstrate than it is to describe. What follows is the text of the fact pattern, interspersed with the mental dialogue a good legal analyst will have with the facts and text. If you practice aloud often enough, this dialogue will soon become second-nature, and you will able to process the material silently.

Bill & Jane & the Trailer

What's the Call of the Question?

[This should be the very first thing you look for. It is usually at the end of a question. Therefore, start at the end. You decide that this is a Torts Question. That's an important start, not to be minimized on the FYLSE.]

Here it is:

Discuss the intentional tort theories available to Bill and Jane Mason in a lawsuit against Dealer.

As instructed, I'll first focus on the Call of the Question, which appears in the last sentence here. Obviously, I'm expected to identify two or more causes of actions, because the plural “theories” is used. I'll try to make a list of all possible causes of action, and focus on the elements for each.

Being told to discuss the theories that Bill AND Jane could assert against Dealer might also be important. I'll think about both these possible plaintiffs, separately and together, as I review the facts.

Now I can begin close reading of the question. If I print out a copy, I can circle or underline important facts. This is a good way to begin an issues list so that I don’t omit any core issues

Upon retirement, Bill and Jane Mason purchased a specially designed, custom-built mobile home trailer from Dealer for $65,000.

Presumably, Bill and Jane jointly purchased a mobile home from Dealer. So far, it sounds as if they would jointly present any cause of action against the
seller. Keeping the Call of the Question in mind, however, I'll see if their interests diverge at any point in the facts. I wonder whether it matters that the mobile home was specially designed to their custom specifications?

They made a down payment of $10,000 and Dealer retained a security interest for the balance of the purchase price. The Masons moved with the mobile home to a space rented in a mobile home park, where they paid a monthly rental.

OK, so Dealer retained a security interest, thus retaining some rights regarding the trailer. That means that the problem will likely involve Dealer coming back for the trailer - I know how these things work on an essay test! I also note that the Masons incurred additional financial obligations in reliance on their purchase, by contracting for a monthly rental in the mobile home park. I wonder whether they pay the rent monthly, but on a long term lease -- or just month-to-month. That might make a difference in eventual damages, if any arise.

I wonder whether the "mobility" of the trailer will be an issue? It can move or be towed, and that isn't like a "fixed-facility" dwelling with a basement. I will stay alert to how the question develops.

Several months later, the Mason's mobile home trailer was removed from the mobile home park by Dealer.

Although the Dealer had retained some financial interest in the trailer, it's odd that the facts don't disclose any justification for the seller removing the trailer from the park. I'll watch to see whether there's any explanation later in the facts.

I can see that the mobility of the trailer seemed to give Dealer the opportunity to "take it back" physically. If it has been "planted in the ground" with a basement, Dealer couldn't have done this. I wonder whether that fact changes what Dealer or the Masons should have known about these events? I wonder whether someone can "covert" a moving trailer by moving it when it was designed to me mobile? Hey: stop. Is a mobile home chattel or real property? Also, if Bill/Jane did not consent to Dealer coming to their home site, there could be a claim of trespass to land. However, the difficulty with this claim would be that Bill/Jane do not own the property, and there could be some kind of express/implied consent in the contract with Dealer which would allow Dealer access to the property on which the trailer rests.
Bill Mason protested the removal and suffered a broken leg when he refused to step down and fell from the step of the trailer as it was being pulled away.

I would protest, too, if someone literally tried to move my home out from under me! Bill certainly deserved an explanation from Dealer at this point, before stepping down from the trailer. Instead of giving Bill any justification or reason for the removal, Dealer or its agents proceeded to put Bill in physical danger. Anyone can see that Bill could be well be hurt if the trailer was moved with him standing on the trailer step. At this point, Dealer seems to be acting quite intentionally and even outrageously, suggesting two types torts: interference with the Bill and Jane’s residence - -- injuring both in the same manner -- and causing foreseeable physical injury to Bill, although not to Jane. I wonder whether the type of indirect contact with Bill is sufficient to constitute “battery”? If Bill saw that the trailer was about to be moved, that may be enough for "apprehension" and "assault." A false imprisonment claim could also be present here, if Bill was confined, even for a small time, in the mobile home. However, I see that Bill apparently had the opportunity to step down from the mobile home, and, therefore, it was his action, and not the action of the Dealer, which apparently caused the momentary confinement to the mobile home.

Because of mental distress suffered by Jane Mason when she watched her husband fall from the steps while protesting the removal of their mobile home trailer, Jane has been hospitalized and is under the care of a physician.

Here’s a third tort, and one that applies only to Jane! The facts expressly raise intentional infliction of emotional distress. Assuming that Jane isn’t faking her injury, there certainly seems to be causation and damages directly arising from watching Dealer’s agents pulling away the trailer in a manner that injured poor Bill. Jane seems to have one problem in proving this claim, however, because this tort requires defendant’s intention. I’ll have to remember to mention that the facts don’t indicate whether Dealer, in fact, knew that Jane was watching. I wonder if we can transfer the intent to move the trailer to IIED?

Dealer now has possession of the mobile home trailer and has advertised the trailer for sale.

So Dealer is now definitely exerting control over the trailer, denying Bill and Jane the use of their mobile home. I have no idea whether the law would treat a trailer as real property for trespass purposes. Maybe I should just mention that possibility and say that the law would at least treat a mobile home as personal property, for purposes of establishing intentional trespass
to such property. In fact, advertising the trailer for resale may well be sufficient to establish the stronger tort of conversion, but until the trailer is actually sold, I am not sure that this is enough.

Dealer had mistakenly repossessed the Mason’s trailer, believing that it belonged to Deadbeat, another party who had also purchased a trailer from Dealer on credit, but who had failed to make any payments.

Dealer is in trouble now! Too bad Dealer didn’t initially notify the Masons of his reasons for taking away the trailer, giving them a chance to point out the error. Dealer might have avoided all three types of injuries. I wonder if "mistake" is a defense to anything here? Trespass? Conversion? But, then how could Dealer not have seen Bob on the trailer? That should have tipped him off – yet he continued.

Discuss the intentional torts theories available to Bill and Jane Mason in a lawsuit against Dealer.

OK, I’m ready to discuss, based on my list of three different torts. All I have to remember is to deal with each tort separately, pointing out their applicable elements. In particular, I want to note the facts tending to establish intent, the difference in resulting damages, and explain whether Bill, Jane, or both are the proper plaintiffs.

Here’s where I think I’ll quickly prepare a chart, like a matrix, so that I can make sure not to omit any facts or "pairs" of potential plaintiffs and defendants.