Bill & Jane & the Trailer

ANSWER TORTS ESSAY ONE

I. Bill and Jane’s theories under intentional torts. Bill and Jane have several legal theories they may pursue to recover from Dealer. Each legal theory will be discussed based on the injuries sustained by Bill and Jane.

A. Bill’s broken leg.

1. Battery. A battery is the voluntary act of the defendant that intentionally causes harmful or offensive contact with the plaintiff’s person. When Dealer began towing the Mason’s trailer, he was committing a voluntary act since Dealer was not pushed or coerced into performing the act. It is also clear that Bill Mason fell to the ground and experienced a broken leg as a result of Dealer’s act. Such a fall and injury would be considered harmful and offensive. However, there are two big problems here that may prevent Bill from establishing a battery action against Dealer.

   a. Intent. First, it is uncertain whether Dealer intended to cause Bill to suffer a harmful or offensive contact. To intend to cause such contact, the defendant must have actual knowledge or knowledge to a substantial certainty that the plaintiff will suffer the contact. Here, the Mason’s must show that Dealer saw Bill or was substantially certain Bill was standing on or in the mobile home as it was being towed away and was substantially certain to suffer harmful or offensive contact as a result.

   b. Contact. Second, it is also uncertain whether Dealer’s act of towing the trailer resulted in a harmful or offensive contact with the person of the plaintiff. Dealer never actually touched Bill, but he did physically move the trailer Bill was standing on. This contact should be sufficient because the law of battery does not require that the defendant actually touch the plaintiff. Touching something reasonably close to the plaintiff will suffice if harmful or offensive contact results.

   c. Conclusion. Assuming that Bill can prove that Dealer acted with the requisite intent, Dealer will be liable to Bill for battery.

B. Jane’s emotional distress.

1. Intentional infliction of emotional distress. Jane may assert a cause of action against Dealer for intentional infliction of emotional distress. This cause of action requires the plaintiff to show that the defendant has engaged in extreme and outrageous conduct which intentionally or recklessly causes the victim to suffer severe mental distress. Here, Jane will be successful if she can show two things: (1) that Dealer’s conduct was extreme and outrageous; and (2) that Dealer intentionally or recklessly caused Jane to suffer severe mental distress.

   a. Extreme and outrageous conduct. Dealer’s conduct in repossessing their trailer (which was their home) while one of the occupants protests and clings to it will be considered extreme and outrageous conduct if Dealer was aware of Bill’s presence and chose to ignore him. Towing a person’s home out from under them should constitute extreme and outrageous conduct—especially when the repossession was erroneous and if no attempt was made to contact the occupants to determine if they were in default.

   b. Intentional or reckless. Jane must also prove that Dealer acted intentionally or recklessly. This means that Jane must show that Dealer acted with a deliberate disregard or a high degree of probability that she would see her husband being injured while trying to save their home and possessions and suffer severe emotional distress as a result. The facts are even more unclear whether Dealer had any knowledge that Jane was present to
observe the repossession. Absent such facts, Jane will not be able to establish this element.

c. **Conclusion**, Jane will not recover for intentional infliction of emotional distress unless she can prove Dealer was aware of her presence to observe Bill being injured and their trailer towed away.

C. **Property damage / loss**. The Mason’s also suffered the loss of their trailer and possessions. They will assert a conversion or trespass to chattel claim to recover for these losses.

1. **Conversion / Trespass to chattel**. Conversion is the *intentional exercise of dominion and control over the personal property* of the plaintiff to such a degree that the defendant should be required to pay full value for it. Here, the problem is whether the court would consider the trailer to be the Mason’s personal property. Usually a home is real property. However, this home is a trailer and is mobile so it should be considered personal property. A second problem is whether this repossession by Dealer and offering it for resale will be a sufficient exercise of dominion and control. Presumably, the Mason’s will be able to prove they are not in default and get their trailer back in a reasonable period of time. If so, the interference may not be serious enough to establish conversion, but it will be a sufficient interference to justify imposing liability on Dealer for the tort of intentional trespass to chattel which requires only some damage or deprivation of use of the plaintiff’s personal property. Even a temporary deprivation of use which the Mason’s experienced will satisfy the requirements for trespass to chattel.