Max and the Doctor

Please read the following "problem" or fact pattern. Begin by going to the end and reading the "Call of the Question." Then, please highlight (or underline) all relevant facts. Go back, re-read carefully, and make sure that you have indicated all relevant "outcome-dispositive" facts.

Then make a list of the issues you believe are raised by the fact pattern.

Finally, go on to the next page and work through "Mind Music," a way of capturing on paper the kind of intense mental engagement you ought to be having while you read a fact pattern. If you are a passive reader, you are not using your time wisely. You need to read with high intensity and a laser-focus on the details. Only in this way you will be prepared to create a short outline and begin writing your answer.
Max and the Doctor

Max is an off-duty police officer. He has worked in Smallville for 30 years and lives with his wife. They have no children. On his day off he always goes to the SleepyTime Café for lunch. This day off is no different. Wearing jeans, a sweater, and an old baseball cap, Max walks into the Café at 11:45 a.m. in order to have lunch. He waves to the hostess, who points him to a small booth in the corner. As his lunch arrives, he notices a man sitting in another booth, not too far from Max. “He looks familiar,” Max thinks to himself and continues to eat his lunch. Then it comes to him: this man is wanted in connection with the murder of a prominent citizen in Max’s town; or at least that is what Max thinks. Unknown to Max, the man is actually, a pediatrician who has served the community for over 20 years. Although the doctor normally wears his white coat to see patients, he is in casual clothes today.

Interrupting his lunch, Max walks over to the table with the doctor and says “I’ve got you!” The doctor jumps with surprise and exclaims, “Leave me alone, you really startled me.” Max then became emboldened, grabbing the doctor’s arm. “Get your hand off me,” exclaimed the doctor, who wriggled free of Max. Becoming angry, Max grabbed the doctor again and held him very tightly. He then told the doctor, “You sit here in this booth while I go and make a phone call; I have my eye on you, so don’t move.” Max went off to make a call to the police station. The doctor watched Max go toward a phone, and then yelled in pain, grabbed his chest, and fell over. Emergency medical workers told Max that the doctor had suffered a heart attack.

Does the doctor have any intentional tort claims against Max the police officer? What defenses can Max raise (facts that possibly excuse Max’s actions) and why?
Max and the Doctor

Key: Trigger Words

- XXX qualifying, describing, or characterizing words
- XXX verb, or action words
- XXX odd facts (things that seem "planted" for some purpose)

Task One:
Identify and mark the "call of the question."

Max is an off-duty police officer. He has worked in Smallville for 30 years and lives with his wife. They have no children. On his day off he always goes to the SleepyTime Café for lunch. This day off is no different. Wearing jeans, a sweater, and an old baseball cap, Max walks into the Café at 11:45 a.m. in order to have lunch. He waves to the hostess, who points him to a small booth in the corner. As his lunch arrives, he notices a man sitting in another booth, not too far from Max. “He looks familiar,” Max thinks to himself and continues to eat his lunch. Then it comes to him: this man is wanted in connection with the murder of a prominent citizen in Max’s town; or at least that is what Max thinks. Unknown to Max, the man is actually, a pediatrician who has served the community for over 20 years. Although the doctor normally wears his white coat to see patients, he is in casual clothes today.

Interrupting his lunch, Max walked over to the table with the doctor and says, “I've got you!” The doctor jumps with surprise and exclaims, “Leave me alone, you really startled me.” Max then became emboldened, grabbing the doctor’s arm. “Get your hand off me,” exclaimed
the doctor, who wriggled free of Max. Becoming angry, Max grabbed the doctor again and held him very tightly. He then told the doctor, “You sit here in this booth while I go and make a phone call; I have my eye on you, so don’t move,” Max went off to make a call to the station. The doctor watched Max go toward a phone, and then yelled in pain, grabbed his chest, and fell over. Emergency medical workers tell Max, later, that the doctor had suffered a heart attack.

Does the doctor have any intentional tort claims against Max the police officer? What defenses can Max raise (facts that possibly excuse Max's actions) and why?
"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 "Max and the Doctor" 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.

Max and the Doctor

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.]

Here, it’s:

Does the doctor have any intentional tort claims against Max the police officer? What defenses can Max raise (facts that possibly excuse Max’s actions) and why?

Okay. This tells me that this essay will involve intentional torts and the counterarguments (or defenses) the defendant (Max) might make to any claims of the plaintiff (the Doctor).

Max is an off-duty police officer.
Thinking skeptically, I wonder if a police office is held to some higher standard than a mere citizen? I notice that he is off-duty. I wonder if that will affect the analysis one way or another. I’ll make a note so I don’t forget to come back to these ideas.

He has worked in Smallville for 30 years and lives with his wife. They have no children.

I realize that whenever dates or times are given, they probably will be important. Right now I can’t imagine why "30 years" has meaning, but I’ll also note that for later. They "have no children." That seems to stick out. I am thinking it might be important later on. In general, these fact patterns don’t have red herrings. If some fact sticks out, it is probably there for a purpose.

On his day off he always goes to the SleepyTime Café for lunch. This day off is no different.

I realize now, that this is a part of this regular routine. I wonder if it is important that this is just a typical day for him?

Wearing jeans and a sweater and an old baseball cap, Max walks into the Café at 11:45 a.m. in order to have lunch. He waves to the hostess, who points him to a small booth in the corner.

I am getting suspicious: first, Max is a police officer, but he is off duty. Is he wearing "normal" rather than "official" clothes. That might mean that no one else (except maybe the regular hostess) would realize that he is a police officer. This could well lead to problems of "mistaken identity," if some other person thought he was just a regular citizen. The problem doesn’t help here, however, so I’ll need to take care with this thought.

As his lunch arrives, he notices a man sitting in another booth, not too far from Max. “He looks familiar," Max thinks to himself and continues to eat his lunch.

In law school, we are taught to think skeptically and analyze all of the facts. I am sure that there will be an issue here! Max, a police officer, may be in casual clothes, and he sees someone who looks familiar. Who would look familiar to a police officer, but someone from a mug shot or wanted poster? This definitely merits my close attention.
Then it comes to him: this man is wanted in connection with the murder of a prominent citizen in Max’s town; or at least that is what Max thinks.

Ah hah! Just as I suspected. Max thinks he has found a criminal! But, there is something strange about the language: "or at least that is what Max thinks." Being skeptical, I am anticipating that this might be a case of mistaken identity – and it could make a big difference in analyzing these facts.

Unknown to Max, the man is actually, a pediatrician who has served the community for over 20 years.

"Unknown to Max." Hmmm. Why wouldn’t a police officer in a relatively small town realize that this man is the town pediatrician? Wait! Dates are always important! Max has worked in Smallville for 30 years. Shouldn’t he have known that this man was a pediatrician in the town? The facts say that the doctor has worked in Smallville for 20 years. Shouldn’t he be expected to have known this? But, there is a problem. I read early on and made a note that Max has no children. That means that there is a good argument that, without children to take to the pediatrician, it is possible that Max never knew or recognized the doctor. I am sure that these kinds of issues will be important in the analysis. On the one hand, Max as a police officer surely knew, or should have known about the doctor. On the other hand, Max would have no specific reason to have met or used the services of the pediatrician.

Although the doctor normally wears his white coat to see patients, he is in casual clothes today.

Hmm. With Max the police officer possibly in plain clothes and the doctor also in casual clothes, this is certainly going to be an issue in some way. Even if Max didn’t know the doctor, if he were wearing his white lab coat, Max would surely have had a reason to know he was a doctor. Whenever we read something unusual in the fact pattern, it probably means that it is going to be an issue or lead to an issue for legal analysis.

Interrupting his lunch, Max walks over to the table with the doctor and says, “I’ve got you!” The doctor jumps with surprise and exclaims, “Leave me alone, you really startled me.”

Okay. Max doesn’t recognize the doctor, but the doctor also doesn’t recognize Max as a police officer either. This lends credence to the analysis that Max, too, is in plain clothes. These means that the doctor, having a peaceful lunch, thinks that
some aggressive stranger has accosted him. No wonder the doctor "jumps with surprise." Thinking about my intentional torts, this seems like a case of "assault" (Assault - a volitional act, done with the intent to create the reasonable apprehension of a battery -- or the intent to commit a battery, causing plaintiff to experience a reasonable apprehension of a battery.) Even if a police office has some kind of privilege for assault in the line of duty, he is not dressed as a police officer and the doctor would have no idea of Max’s profession. This is worth analyzing in my answer. I wonder if a police officer who is "off duty" has the same range of "privileges" that he would have while fully "on duty"?

Max then became emboldened, grabbing the doctor’s arm. “Get your hand off me,” exclaimed the doctor, who wiggled free of Max

Okay, Max is getting a bit bolder and more assertive - and yet the doctor still doesn’t realize that Max is a police officer. The doctor tells Max to let go and wiggles away. There is now direct physical contact. reviewing my list of intentional torts, I realize that this seems to meet the definition for "battery." (Battery - a volitional act, done with the intent to inflict harmful or offensive contact, which causes a plaintiff to suffer a harmful or offensive contact.) This is still a real problem in the analysis because Max, as a police officer, may have the privilege to touch and physically restrain another - except that he is, apparently, not in uniform and he is "off duty." (Privilege - a right to preferential treatment, or an exemption from a duty of care others must perform.) A reasonable person in the doctor's position would not realize that Max was a police officer, and Max has said nothing to inform the doctor. I guess Max could have said, "I am a police officer. Don’t move. You are under suspicion of murder." But, Max didn’t announce his position or state the purpose of his "touching."

Becoming angry, Max grabbed the doctor again and held him very tightly.

Okay. Here is a possible repeat, or second, battery. Apparently, Max held the doctor tightly, preventing him from moving. "Again" must be important. This means that even if I might believe that the first action wasn’t intentional, if he did it "again," this seems to make it clear.

He then told the doctor, “You sit here in this booth while I go and make a phone call; I have my eye on you, so don’t move.”
I guess the doctor is free to go because he still doesn’t know that Max is a police officer, but Max has been fairly intimidating and displays a great deal of physical strength when he "held the doctor tightly." The combination of brute strength and an angry manner would be compelling to most people. It is possible that just the force of Max’s personality, physical strength, and demeanor might constrain the doctor and prevent him (from fear) from leaving the booth. Checking my list of intentional torts, I see that this raises the issue of "false imprisonment," which I will need to discuss. (False Imprisonment - a volitional act, done with intent to confine the plaintiff, causing the plaintiff to be confined to a bounded area under circumstances in which the plaintiff is aware of confinement or is actually injured by the confinement.) I am troubled, however, by the word "false." Clearly, it was "false" because the doctor was not the sought-after murderer, but is that enough? Does it matter that Max had a good faith (but mistaken) belief that the doctor was the sought-after murderer? Did Max have an obligation to (1) identify himself as a police officer or (2) ask the doctor to identify himself, maybe show a driver’s license before ordering him to stay in the booth? Minimally, Max could have asked the doctor his name.

Max went off to make a call to the station.

Even though the call was to the station, there is still nothing in all of these events to let the doctor know that Max is really a police officer.

The doctor watched Max go toward a phone, and then yelled in pain, grabbed his chest, and fell over. Emergency medical workers told Max that the doctor suffered a heart attack.

This is important because these facts establish some injury or "harm" to the plaintiff. Perhaps, Max didn’t intend to cause the doctor to have a heart attack, but his actions, seemingly, were the critical factor in triggering the attack. The choice of the word "suffered" seems to confirm that the doctor can establish "harm" or injury." This is so clear, in fact, that I probably don’t need to write as much on this as on other points that are in doubt. Time is always a problem, so I’ll spend less time on something that seems to be a "given."

Does the doctor have any intentional tort claims against Max the police officer? What defenses (facts that possibly excuse Max’s actions) can Max raise and why?
Here, I am back to the question, also known as the "call" or the "call of the question." This just means: What is the specific question I am being asked to answer? By focusing on the "call" of the question, I won't waste time on tangential issues (that won't gain me any points) and I'll have more time for the critical issues (which will gain me points). I remembered, however, to read the "call of the question" first, so that my thinking and analysis could be focused. Next time, I think I'll highlight or circle the "call" right away so I don't miss it.

The "call" ends with: "Why" - that seems vital. The examiner really expects me to give my reasons, not just my conclusion.

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This completes this demonstration of "Mind Music." Thinking critically while you read a fact pattern is a learned skill. Please be patient with yourself! Most students do not become highly skilled at this technique for several months. Others require even more time, but, by the end of the term, all students have generally developed these basic skills.