Question 4

During the late summer, State College of Law held its annual student versus faculty softball game and picnic. The game was hotly contested and, as a result of poor sportsmanship on both sides, tempers flared.

Following the game, the students’ team was presented with the winner’s trophy, which Abel, the captain of the student team, held aloft. Thinking it would be funny, Charlie, a member of the faculty team, threw a ball at the trophy, striking it and knocking it from Abel’s hands. Angrily, Abel picked up the trophy, approached Charlie and said, “If you weren’t a professor here, I would take that trophy and stick it in your ear.” Charlie, who was physically much bigger than Abel and a former professional boxer, did not feel threatened by Abel’s reaction.

Edward, another professor and member of the faculty team, believing that Abel was about to attack Charlie, struck Abel with a baseball bat, resulting in a large bruise to Abel’s arm.

1. Under what theory or theories might Charlie bring an action for damages against Abel, what defenses, if any, might Abel assert, and what is the likely result? Discuss.

2. Under what theory or theories might Abel bring an action for damages against Edward, what defenses, if any, might Edward assert, and what is the likely result? Discuss.
Answer A to Question 4

Charlie v Able

Assault

Intentional placing of another in apprehension of an immediate harmful or offensive bodily contact

The facts state that Abel picked up the trophy and approached Charlie and said “If you weren’t a professor here, I would take that trophy and stick it in your ear.” Abel's actions appear to be volitional, and the menace to Charlie appears to be intended. However, a conditional threat can negate intent. Since Abel said “If you weren’t a professor here, I’d stick the trophy in your ear,” Abel’s threat was conditional on Charlie’s position as a professor. The conditional nature of the threat may negate the intent required for assault.

The facts state that Charlie was physically much bigger than Abel and also a former professional boxer and that he did not feel “threatened” by Abel’s conduct. The test for assault, however, is not fear, but a reasonable apprehension of an imminent harmful or offensive bodily contact. If Charlie believed Abel would throw the trophy at him or strike him with the trophy, even if Charlie was not ‘afraid’ because of his superior physical stature, the apprehension would be sufficient to sustain a claim for assault.

Defenses

Self-Defense?

Abel is permitted to use a reasonable force to repel an attack made against him. Here, the facts state that Charlie threw a ball at a trophy Abel held in his hands. If Abel reasonably believed the ball was meant for him, he would be privileged to defend himself. This seems unlikely, because Charlie thought the thrown ball would be funny, and as a result the threat to Abel had abated. Abel will not be privileged to claim self-defense.
Consent?

If the plaintiff expressly or impliedly consented to the behavior by the defendant, the
defendant will not be liable. Here, the facts state that the students and professors were
engaged in a hotly contested softball game. During sporting events, some bad
sportsmanship can be expected. Continued participation in the event will imply consent
on the part of the participants to receive and administer the results of bad
sportsmanship. However, the threat took place after the end of the game, and a
reasonable person in Charlie’s position would not impliedly consent to threats made
after the game. The defense of consent will not be available to Abel.

Intentional infliction of emotional distress

Extreme and outrageous conduct by the defendant calculated to cause, and which does
cause, extreme emotional distress.

The facts state Abel said “If you weren’t a professor, I’d stick this trophy in your ear.”
While in some circumstances that could be construed as extreme and outrageous,
given the context in which the events transpired Abel’s actions will not rise to the level of
extreme and outrageous.

Abel will not be liable to Charlie for intentional infliction of emotional distress.

Damages

Since Charlie did not feel threatened and sustained no injuries, he will likely be awarded
only nominal damages.
Abel v Edward

Assault
Defined supra

The facts do not indicate that Abel was aware the blow from the baseball bat was coming. Without actual apprehension, Abel will not be able to sustain a claim of assault.

Battery

Intentional harmful or offensive bodily contact without consent

The facts state that Edward believed Abel was going to attack Charlie, and also that Edward struck Abel with a baseball bat. Edward’s conduct of swinging the bat appears to be volitional and the result of striking Abel with the bat intended, and Edward was apparently trying to stop an attack.

Being struck with a baseball bat can only be construed as a harmful bodily contact.

As discussed supra, everyone on the scene had just participated in a softball game in which tempers flared. While continued participation in the game would imply consent to some bad sportsmanship, the consent would not extend to being struck on purpose by a baseball bat. Abel did not consent to the attack.

Defenses

Defenses of others

One is justified in using reasonable force to repel an attack on another. Majority rule: alter ego rule – the defendant must step in the shoes of the ‘victim’ of the attack. Here,
the facts state that Charlie had thrown the ball at Abel while Abel held the trophy. Since Charlie was the aggressor in the altercation between himself and Abel, he would not be privileged to defend himself. Further, as discussed supra, the threat to Charlie was conditional and Charlie was not in any real danger. Since Charlie would not be privileged to defend himself in the situation, in majority rule jurisdictions Edward would not be privileged to defend Charlie. No mistake, however reasonable, is permitted.

Minority rule: the modern trend is to allow a reasonable mistake. If the situation presented itself to Edward, and he reasonably believed Abel represented a threat to Charlie, Edward would be privileged to use reasonable force to repel the attack. Here, the facts state that Charlie is much bigger than Abel and that Edward used a baseball bat. Even if Edward was privileged to come to Charlie’s defense through a reasonable mistake, the use of a baseball bat in this situation is not reasonable. Edward will not be able to assert the defense of others’ defense.

**Damages**

**General damages**

Pain and suffering by Abel resulting from the injury.

Abel will recover general damages from Edward.

**Special damages**

Specifically accountable expenditures incurred by Abel.

Abel will recover doctor’s bills, lost wages, etc., as special damages for all expenditures he can specifically account for.
Punitive damages

Where the defendant is reckless and wanton in his behavior, the plaintiff will recover punitive damages.

Since Edward used a baseball bat on a diminutive person with no available defenses, Abel will likely recover punitive damages.
Answer B to Question 4

1. Charlie v. Abel

Assault

Assault is defined as intentionally placing the person of another in reasonable apprehension of an immediate battery without consent or legal justification.

The facts tell us that after Charlie threw a ball at the trophy held by Abel, Abel became angry and approached Charlie. The fact that Abel said, “If you weren’t a professor here, I would take that trophy and stick it in your ear” indicates a possible intent on the part of Abel to batter Charlie.

In order to determine whether this statement by Abel to Charlie constituted assault we must analyze whether or not the words were intended to place Charlie in reasonable apprehension of an immediate battery.

Due to the fact that Abel qualified his statement by stating, “If you weren’t a professor here” indicates that although he may have a desire to take the trophy and stick it in Charlie’s ear, that he would only do so if Charlie was not a professor there. Since Charlie was a member of the faculty team it can be deduced that he was a professor at Abel’s school.

Inasmuch as the facts also tell us that Charlie was physically much bigger than Abel, was a former professional boxer, and “did not feel threatened by Abel’s reaction” it can be concluded that Charlie was not placed in reasonable apprehension of an immediate battery.

Abel will likely argue that his statement to Charlie which indicated that if he “wasn’t a professor there he would take the trophy and stick it in his ear,” specifically precluded
him from acting. In fact he was a professor there; thus, no actual words were stated which would cause a reasonable person to be in fear of an immediate battery.

Charlie would not prevail in an action against Abel for assault.

**Intentional Infliction of Emotional Distress**

Intentional infliction of emotional distress is defined as outrageous conduct which is intended to and does cause severe emotional suffering.

The question here is whether or not the statement made by Abel to Charlie was sufficient in nature to constitute outrageous conduct. The fact that the conversation between Abel and Charlie came after a “hotly contested” softball game in which there was “poor sportsmanship on both sides” and “tempers flared” serves to place the actions of Abel into context in determining what was reasonable under the circumstances.

It is reasonable under the conditions described that Abel would be upset at Charlie’s actions of throwing a ball at the trophy held by Abel, which served to knock it from his hands. Thus, the fact that Abel angrily picked up the trophy and approached Charlie making the statement previously described is not outrageous conduct under the circumstances.

The facts tell us that Charlie “did not feel threatened by Abel’s reaction” and there are no facts to indicate that Charlie suffered any type of emotional suffering.

Charlie would be unsuccessful in an action against Abel for intentional infliction of emotional distress.
2. Abel v. Edward

**Assault**

Assault is defined as intentionally placing the person of another in reasonable apprehension of an immediate battery.

**Battery**

Battery is defined as harmful or offensive touching of the person of another without consent or legal justification.

In this case Edward “struck Abel with a baseball bat,” which resulted in a large bruise on Abel's arm. The contact between the bat which was being held by Edward and Abel's arm was sufficient to satisfy the element of a touching of the person of another.

The touching was harmful in nature as evidenced by the large bruise it caused on Abel's arm. At no point in the fact pattern does it indicate that Abel consented to being hit with the bat by Edward; however, there may be some evidence of legal justification which will be asserted by Edward in defense of the action.

The question as to whether or not an assault occurred rests with whether or not Abel saw Edward swing the bat at him prior to it making contact with his arm. There are no facts which indicate that Abel saw Edward swing the bat at him prior to contact. In fact, the facts support that at the time that Edward swung the bat striking Abel on the arm that Abel was involved in a heated conversation with Charlie. The exchange was occurring after the game in which “tempers flared.” Thus, it is likely to deduce, absent any facts to the contrary, that Abel did not see Edward swing the bat at him while he was engaged in conversation with Charlie.

Therefore, Abel would not have a cause of action against Edward for assault.
Defense to Battery

Edward will likely assert a defense which rests on the notion that his actions were in defense of Charlie.

Defense of Others

There is a jurisdictional split on whether or not a person may step in to defend another in a situation such as the one presented in this case.

In the majority of jurisdictions one may step in and defend another if they believe that the person is in need of protection. In these jurisdictions the courts rely on the reasonable person’s standard; that is, would a reasonable person in [the] same or similar circumstances have reacted similarly?

In the minority of jurisdictions a different approach is taken. Here, the person who steps into a situation to defend another stands in the shoes of the person to whom they have come to aid. Therefore, a person would only have the right to defend the person if the person had the right to defend themself.

In both cases the person providing assistance or defending another must use reasonable force short of a breach of the peace.

In this case, Charlie did not maintain the right to defend himself from Abel’s words by hitting him in the arm with a bat. Thus, in the minority of jurisdictions Edward’s defense would fail.
If this were heard in a majority jurisdiction Edward’s actions would be based on a reasonable person’s standard. Inasmuch as Abel made no direct threat to Charlie, Charlie was larger in size and not threatened himself by Abel’s actions, it is not reasonable for Edward to believe that Abel was about to attack Charlie.

Therefore, Abel will prevail in an action against Edward for battery.