

### Question 3

David drives a parcel delivery van. On Monday, while delivering packages in a residential neighborhood, David struck and badly damaged a parked car owned by Able. At the time of the collision, David was driving 30 mph. The posted speed limit for the street is 25 mph, but residents customarily drive at 30 mph.

On Tuesday, David left a package for Baker on the front step outside of her house. He placed the package just in front of the doorway, and when Baker walked out of her house later in the day, she tripped over the package, breaking her hip.

On Wednesday, while returning to his van following a delivery, David stopped to chat with Carl, who was sitting in his car and about to back out of his driveway. When they finished speaking, Carl began to back out of the driveway. At that moment, David saw a car speeding down the street towards Carl. David considered warning Carl of the approaching car, but since David was in a hurry, he decided not to go back and tell him. As Carl backed out of his driveway, he was struck by the speeding motorist and was seriously injured.

Able, Baker, and Carl have all filed lawsuits against David.

What is David's liability to each of them? Discuss.

### Answer A to Question 3

3)

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1. ABLE v. DAVID

Negligence

A duty to conform to a standard of care, the breach of which is the actual and proximate cause of plaintiff's damages.

Duty

Generally there is a duty to all foreseeable plaintiffs to act as a reasonable, prudent person under the circumstances.

Here, David is required [to] act as a reasonable, prudent delivery person driving in a residential neighborhood. He should be aware of parked cars and the possibility of hitting them. He has a duty to drive carefully.

Foreseeable Plaintiff

Since Able lives in the neighborhood and had his car parked there, he is a foreseeable plaintiff.

Breach

An unjustified failure to live up to the standard of care.

Here, David struck Able's parked car. The question is whether he was negligent and failed in his duty.

Negligence Per Se

If a statute has a penalty for its violation and proscribes the conduct expected and the statute is designed to prevent the type of harm caused by defendant and protect the class of plaintiff harmed by defendant, the statutory duty will be substituted for the common law duty. Its breach is negligence per se.

Here, David broke a speeding statute that proscribed an expected conduct of 25 mph (David was driving 30 mph). In addition, the statute would obviously have a penalty (a speeding ticket) and it is designed to protect persons or property owners that may be harmed by speeders (type of harm and class of plaintiffs).

Therefore, David is negligent per se.

## Causation

### Actual Cause

“But for” David’s speeding, Able’s car would not have been damaged how and when it was.

### Proximate Cause

David’s speeding and hitting Able’s car was foreseeable and there were no intervening events that would break the chain of causatio[n]. The damages flowed naturally from the car being hit.

### Damages

General Damages (pain and suffering)

Here, there is no personal injury to Able.

Therefore, there is no recovery for pain and suffering.

### Special Damages-Pecuniary losses

Here, Able will be able to recover for his property damages (his car was badly damaged). He will recover for any repairs or for total loss of car if that is the case.

## Defenses

### Comparative Negligence

A plaintiff’s recovery will be reduced by his degree of fault. In some jurisdictions, the plaintiff will be barred from recovery unless his degree of fault is “less serious than” (49%) or[,] in others, “not more serious than” (50%) the defendant’s fault.

Here, there is no indication that Able had any degree of fault.

Therefore there will be no reduction in Able’s recovery.

### Contributory Negligence

In some jurisdictions, a plaintiff may be completely barred from recovery if he contributes in the least to the harm.

Here, there is no indication that Able contributed in the least to the accident.

Therefore, there will be no reduction in his recovery.

### Assumption of Risk

A plaintiff may be completely barred if he knowingly and voluntarily assumes the risk of the accident.

Here, there is no indication that Able knew of the risk to his car or voluntarily assumed it.

Therefore, his recovery will not be barred due to assumption of risk.

## 2. BAKER v. DAVID

### Negligence

Defined supra.

### Duty

Defined supra.

Here, David had a duty to foreseeable plaintiffs to act as a reasonable, prudent delivery person.

### Foreseeable Plaintiff

Here, since Baker is receiving a package from David and will be coming out of the house through that door, he is a foreseeable plaintiff.

### Breach

An unjustified failure of defendant to conform his conduct to the duty owed.

Here, David acted unreasonably and without proper precaution. He should have anticipated that the resident, Baker, would be coming out the door and might not see the package that is “just in front of the doorway.”

Therefore, David breached his duty owed to Baker.

### Causation

#### Actual Cause

“But for” David’s placing the package “just in front of the doorway”, Baker would not have been injured (broken her hip) as when and how she was.

#### Proximate Cause

It was foreseeable that someone coming through that door would not see the package and would trip over it and be injured (such as breaking a hip). There were no intervening events between David’s placing the package in front of the door and Baker’s tripping that would break the chain of causation. There was no superseding event.

### Damages

#### General Damages

Defined supra.

Here, Baker broke her hip. This must have been very painful and she will suffer through a period of rehabilitation. Depending on her age, she may even need a hip replacement (further suffering.)

#### Special Damages

Defined supra.

Here, Baker will need medical attention. She may also lose time from work (lost wages) and suffer other pecuniary losses.

Therefore, Baker will recover for her pecuniary losses.

#### Defenses

##### Comparative negligence

Defined supra.

Here, there is no indication that Baker had any degree of fault. Although David may claim that Baker should have looked where he was going, the facts do not indicate that Baker was unreasonable or imprudent in his actions under the circumstances.

Therefore, there will be no reduction in her recovery.

##### Contributory Negligence

Defined supra.

As stated above there is no indication that Baker had any degree of fault. Therefore, she will not be barred from recovery.

##### Assumption of Risk

Defined supra.

There is no indication that Baker voluntarily assumed and [sic] known risk.

#### Damages

Damages and defenses will be as discussed above under negligence.

### 3. CARL v. David

#### Negligence

Defined supra.

#### Duty

Defined supra.

A duty is owed if there is some relationship that requires a duty (such as parent to child or between spouses) or by contract, or by statute or[,] if there is an assumption of care or a creation of peril. This is especially true in an act of omission.

Here, there was an act of omission by David (didn't warn Carl). However, David did not owe Carl a duty. The facts do not indicate he was related to Carl, that he had any contractual duty to warn Carl, or that there was a statute that required him to do so. In addition, David

did not create the peril (didn't cause the speeding car) and did not assume any care of Carl which he then abandoned (he did not prevent others from helping Carl).

Therefore, David will have no liability as to Carl.

### Answer B to Question 3

3)

#### Negligence

Negligence is a failure to execute that degree of care a reasonable person would exercise in the same or similar circumstances[.]

#### Able v. David

A plaintiff (¶) in a negligence action must establish as a prima facie case: duty, breach, causation actual and proximate, and damages.

#### 1. Duty

Generally one does not owe any duty to another, but duty can arise by statute, contract, assumption, relationship or peril.

Under Palsgraf, Cardozo argued that where duty arises from peril a defendant's action can put a ¶ in peril if he (¶) is foreseeable and in the zone of danger. Andrews argued if there was a duty to any one there was a duty to all[.]

Here David has placed A. in peril because he is driving a van and A's car is parked on a street in the zone of danger where D's van is likely to be driving[.] Therefore, D owes a duty of reasonable care to A and his property.

#### 2. Breach - Did D breach his duty to A?

Breach is a failure to exercise reasonable care. Where there is a statute usually safety related – that has been violated it is negligence per se. A statute must:

1. be clearly defined
2. the ¶ must be in a class intended to be protected by the statute
3. the harm done was that type that the statute included be present
4. the D. was not excused by necessity

Here there is presumably a speeding statute because there is a posted speed limit of 25 mph. The ¶, A[,] is clearly in the protected class because his auto is subject to accident from speeding cars. The harm (vehicle damage) was what [the] statute intended to protect and D had no legitimate excuse. Therefore D has breached his duty to A.

#### 3. Causation - Actual

Actual causation means that "but for" the D's act, ¶ would not have suffered damage. Here but for D's striking A's car A would not have been damaged[.]

Proximate Cause means that defendant's acts were not so far removed in time or space and were direct and foreseeable that the law would impose liability for ¶ damage.

Here D's driving and striking A's car was the direct cause, unbroken by any intervening event, that caused A's car to be damaged.

Therefore the causation element has been satisfied[.]

#### 4. Damages

A has suffered actual damages because his car was "struck and badly damaged."

#### 5. Contributory/Comparative Negligence

Where a ¶'s negligence contributes to his injuries he can be barred from recovery in a strictly contributory neg. jurisdiction or have his recovery reduced in proportion to his own negligence.

Here there is no evidence from the facts that A had carelessly parked the car[.] Therefore D probably could not raise this Defense[.]

### Baker v. D

#### 1. Did D owe a duty to Baker[?]

D has placed B in peril by his act because he's placing the package is [sic] in the zone of danger of where B is likely to be and it is foreseeable that B would be walking out his front door.

#### 2. Breach –

D's failure to act with reasonable care by placing the packages just in front of the doorway instead of off to the side would probably breach his duty to B[.]

#### 3. Cause - Actual

"But for" the package being in front of the door B would not have tripped over it[.]

The package is the direct cause of B's tripping[.] therefore it is the proximate cause[.]

#### 4. Damages

B has suffered damages because she "broke her hip[.]"

#### 5. Contrib. Negligence (C/N)

defined above - Here it is arguable that B was negligent in not looking around before walking out the door[.] Therefore her damages could be barred or reduced depending on the jurisdiction[.]

### Carl v. D

There is no affirmative duty to act so D would not be liable to Carl for failing to warn him of

the car. If[,] however[,] there were a special relationship (i.e. child) there would be a duty[.]

Conclusion

D is liable in a negligence action to A[.]

D is probably liable on a pro rata basis to B[.]

D is not liable to C[.]