

# FINAL EXAMINATION

## TORTS

### HOUSE OF RUSSELL

#### INSTRUCTIONS:

- DEADLINE:** This is a 75-hour examination. You may begin the exam at any time after 10 am on Friday, December 13, 2013. You must submit your answers by 1 pm on Monday, December 16, 2013. **If you turn in your answers after 1 pm on December 16, then you will receive an F for your grade. NO EXCUSES.**
- TURNING IN YOUR ANSWER:** Turn in your answer by sending the file to [registrar@law.du.edu](mailto:registrar@law.du.edu). Sending your answer with either a send receipt or a delivery receipt is a good idea. As well, send yourself a copy of the message that you send to the registrar. This will verify the fact and time of your sending your answer. **DO NOT SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL; YOU VIOLATE THE HONOR CODE IF YOU SEND A COPY OF YOUR ANSWER TO PROFESSOR RUSSELL.** In the subject line of your email, put the following text: "Russell-Torts-[exam number]" where [exam number] is your exam number. Name the file that contains your answer using the same convention: Russell-Torts-[exam number]. **Do NOT contact Professor Russell with exam-related difficulties.**
- OPEN-BOOK:** This is an open-book, take-home examination. Your answer must be of your own composition. You may work on this examination wherever you wish, and you may consult any written material that you wish. However, you violate the Honor Code if you discuss, show, or distribute this examination or your answers to anyone at all before 1 pm on Monday, December 16. Avoid, for example, posting anything on Facebook that looks like a request for assistance. Avoid, too, appearing to work with other people in study rooms or the library. Once the examination starts, you may not discuss it with anyone at all before the examination ends at 1 pm on December 16, 2013.
- EXAM NUMBER:** Please put your exam number on each page. The easiest way to do this is to put the exam number in a header on each page. **Do not put your name anywhere on the exam.** You should name the file Russell-Torts-[Exam Number]

5.     **LENGTH:** This examination consists of one question. You may use no more than 2,500 words to answer the question. Reducing your answers to this word limit will be one of the challenges of this examination. **Please include the word count at the end of your answer.**
  
6.     **FORMATTING:** Please double-space your answers. *Avoid miniature fonts, okay?* Avoid putting bullet points in front of every paragraph as this is oddly distracting to Professor Russell. Note, too, when the registrar rechecks the word count, bullet points are sometimes counted as words. This generates needless confusion.
  
7.     **HOW TO ANSWER:** In answering, use judgment and common sense. **Be organized.** Emphasize the issues that are most important. Do not spend too much time on easy or trivial issues at the expense of harder ones. If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of law with the facts before you. Avoid wasting time with lengthy and abstract summaries of general legal doctrine. Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think that a court would resolve an ambiguous question one way rather than another.
  
8.     **JURISDICTION:** The laws of Newstate, the 51st state of the union, apply to all the issues in this examination. Newstate is NOT Colorado. New City is that name of a fictional city. New Country is the name of a fictional country.
  
9.     **CONCISION:** Quality, not quantity is desired. Think through your answer before you begin to write. You have a lot of time to write and edit your answers. You will earn a better grade by being thorough and concise. And, of course, well-organized answers will be the best answers that earn the highest grades.
  
10.    **KEEP A COPY:** You should retain a copy of your exam answer. You should feel free, of course, to keep a copy of the exam.

11. **CHEATING:** If, in preparing for this examination you have violated the Honor Code, or if, during this examination, you violate the Honor Code, the best course of action is for you to report to the Dean of Students immediately after this examination ends.

12. **GOOD LUCK:** Good luck and have an excellent break.

## **Black Friday**

“Black Friday” is the day after Thanksgiving Day in the United States. At Urbandictionary.com, one of the definitions of “Black Friday” is as follows:

The Friday following Thanksgiving. Stores have incredibly low prices for a few hours inciting mass hysteria, death, car crashes, and lost children so you can get 8 DVD players for the price of 3.

The origin of the term “Black Friday” is a matter of dispute. Some claim that the name originated in Philadelphia as a description for the heavy foot and motor traffic on the day after Thanksgiving. Others argue that Black Friday is the day of the year when retailers begin to turn a profit. That is, on Black Friday, the balance sheets of retailers move from being in the red to being in the black. Whatever the origin of the term, Black Friday has been the busiest shopping day of the year in the United States since at least 2005.

Americans love bargains. And Americans are willing to go to great lengths to buy things at bargain prices. Black Friday is the best evidence of this willingness. Black Friday is a day when retailers offer deeply discounted prices for merchandise particularly big-ticket electronic items such as televisions, game consoles, and audio/video equipment. Typically, the store will have a limited number of the discounted items on hand. Many think of the Black Friday as the official start of the Christmas shopping season.

Retail stores open early on Black Friday. During the early years of the 21st century, stores opened at 6:00 a.m. with some shifting to 5:00 a.m. or 4:00 a.m. In 2011, several large retailers--including Target, Kohl's Macy's, Best Buy, and Bealls--opened at midnight. The following year, Wal-Mart began opening its stores at 8 pm on Thanksgiving Day--that is, the day before Black Friday. Wal-Mart closed its stores on Wednesday evening--the night before

Thanksgiving--and then reopened them at 8 pm on Thanksgiving Day after most people had finished their Thanksgiving meals.

Wal-Mart is the largest retailer and the second largest public corporation in the world. Wal-Mart, a family owned business, is also the largest private employer in the world. Wal-Mart has more than 8,000 stores in 15 countries including more than 4,000 in the US alone. In a few countries--Germany and South Korea--Wal-Mart has not had success.

Last month, Black Friday at New City's Wal-Mart turned into a mess.

Starting in 2009, bargain-hunters began camping in front of the New City Wal-Mart store for a week or more in order to be at the front of the line when Wal-Mart opened its doors to Black Friday shoppers. In 2009, Black Friday started at 6:00 a.m. on Friday. In 2013, the sales started at 8 p.m. on Thanksgiving Day, which makes the term "Black Friday" a misnomer. The bargain hunters camped on the sidewalk in front of the Wal-Mart store in a line that stretched into the Wal-Mart parking lot. Nearly everyone had sleeping bags, and many had tents in which they slept at night and passed the time during the day. Among the campers no one seemed to have jobs, and no one did the math to calculate the opportunity cost of waiting in line to buy Wal-Mart's products at bargain prices.

During the days preceding Thanksgiving this year, the bargain hunters had confirmed with the store's manager which doors would be the first ones to open when the sale started. As the manager knew, once the store doors opened, the bargain hunters would run into the store in a frenzy with most of them headed toward the electronics department, where the most sought-after bargains would be.

The line of campers stretched from the main doorway of the store without blocking that entrance or any other entrance to the store. The line stretched into the parking lot about mid-day on Thanksgiving Day. Just before noon, the camping, bargain hunters began to push forward toward the doors. They packed up or in some instances discarded their sleeping bags and camping gear and started advancing toward the front door of the Wal-Mart store. Rather than forming a single-file line that preserved the order in which the camper-shoppers had arrived at the store, the bargain hunters formed a disorderly crowd massed around the front doors.

At noon on Thanksgiving day, Paul Petraeus was in the center of the crowd right at the spot where the doors would first open. He was therefore in position to be Black Friday shopper number one when the doors opened at New City's Wal-Mart store. Petraeus was there to buy a flat-screen TV. Petraeus had his heart set on a 60-inch ultra-slim (1.94 inch) Vizio E601i-A3 High Definition television with 1080 pixel resolution and built-in WiFi. Petraeus planned on mounting the HDTV on the wall of his living room. The list price for the Vizio television was \$999.00, but Wal-Mart had advertised that its Black Friday price would be \$549.00--a discount of exactly \$450. Wal-Mart advertised that there would be 12 of the 60-inch Vizio televisions available at the New City store.

Petraeus gained the first position in part because he had been the first camper in line outside the door. Another reason that Petraeus kept the first position at the door was because he was an Army veteran who had served in New Country, which is where he was injured. The other camper-shoppers liked to say "thank you for your service" even though they generally had no idea where New Country was nor when or why Petraeus had served in the conflict there. But probably the biggest reason that Petraeus kept the first position at the door was that the other camper-shoppers did not think of him as serious competition in the hunt for bargains. After the melee and injuries, the other camper-shoppers began to admit that they expected that getting past "Blind Paul"--the nickname that they all used for the disabled veteran--and his service dog was

not going to be a problem in the race for bargains when the store opened at 8 pm on Thanksgiving Day. They expected to be able to run past the blind veteran and beat him to all the best bargains.

Petraeus--Blind Paul--had lost his sight in battle. Everyone assumed that his faithful service dog--Happy--was a seeing-eye dog, which was true. But Happy was also trained for sufferers of Post-Traumatic Stress Disorder. The program Paws for Purple Hearts trained Happy to help Petraeus overcome the symptoms of PTSD. One symptom was insomnia; another was anxiety when dealing with loud noises or crowds. Most Paws for Purple Hearts dogs were Labrador Retrievers or Golden Retrievers. Happy was 3/8ths Labrador Retriever and 5/8ths American Pit Bull Terrier. American Pit Bull Terriers are more commonly known as Pit Bulls. Petraeus knew that New City had an ordinance regarding ownership of Pit Bulls, but he believed that the ordinance applied only to full-blooded Pit Bulls. He also figured that no one was going to ticket a blind veteran for having a guide dog that was part Pit Bull. Plus, he loved Happy.

In the afternoon of Thanksgiving Day, the crowd outside the New City Wal-Mart grew and became, at times, rowdy. Although Paul Petraeus remained in the front, center of the crowd, there was no semblance of a line. Instead, there was a teeming, semi-circular mass of people outside the door. The manager and assistant managers watched the crowd--sometimes they watched using the store's video system and other times, the manager and assistant managers stood inside the store and watched from about 20 feet inside the doors. After 5 pm, the manager and assistant managers watched only on video, because they were frightened to be in front of the crowd of Black Friday shoppers.

At about 4:45 pm, one of the assistant managers walked through the area of the store just inside the front doors where the crowd was gathered. She nearly slipped on a shiny spot on the store's tiled floor. She stopped and took a look at the spot. She touched the floor with her

fingers. The floor seemed oily, so she used a radio to ask one of the staff to place an orange pylon on the oily spot. The crowd watching from outside saw the staff member place the pylon over the slippery spot--except of course for Paul. Just for fun, members of the crowd chanted "pylon, pylon, pylon" for a few minutes. Paul thought they were chanting "pile on, pile on, pile on," and he was not sure why.

While the assistant manager was overseeing the placement of the pylon on the slippery spot on the floor, the manager contacted her via radio. He asked her about the dog, which the manager had noticed in the video of the crowd gathered at the door. The assistant manager, who had met and talked with Blind Paul, informed the manager that Happy was a seeing-eye dog. "Weird," thought the manager.

Just before 8 p.m, the Wal-Mart manager used the store's intercom to count down the last ten seconds before a staff member swung the store's doors open. He loved the countdown, which he always finished by shouting "Three, Two, One. Black Friday!" The crowd outside could hear the countdown and counted down from ten with the manager.

At "Three," the crowd's pushing caused the doors into the Wal-Mart to burst open. Blind Paul Petraeus stayed on his feet and held onto his dog as the crowd pushed him forward. He fell when he reached the pylon. He tripped on the pylon, and slipped on the floor. He felt the pylon collapse beneath him just before the crowd--which was shouting loudly--trampled him. He felt the pressure and kicks of many dozens of footsteps on his body, limbs, and head and could hear "X-Box," "Flat Screen," "Beats," and "Laptop" repeated by shoppers who trampled him. He remembers one person saying "Hey, it's Blind Paul!"

Instinctively, Happy tried to protect Blind Paul. When Paul fell, the dog tried to position itself between Paul and the surging crowd. Happy growled and barked. When a nine-year-old

boy named Junior moved toward Paul in an effort to help Paul, Happy bit the boy. Happy clamped his jaws onto the boy's right hand and would not let go even as Junior's mother--who had watched in horror as the dog bit her child--punched and punched the dog. Happy did not let go until the animal control officers tranquilized him. The boy, terribly traumatized by the experience, lost the use of his right hand due to nerve damage from the biting and mangling. He is right-handed. His dream was to be major league baseball pitcher.

The animal control officers euthanized Happy the next day. Petraeus never got the TV.

Paul suffered multiple broken bones including a broken left leg, broken right arm, and several cracked ribs. His physicians believe that these physical injuries will heal, although he may be left with a limp. However, his physicians are less hopeful that he will recover from the psychic shock that he suffered. Whenever he hears loud noises or shouting, Paul cowers in fear. Medicine that used to help his PTSD no longer does. And he is terribly depressed that Happy is dead.

The injuries to Paul Petraeus and Junior were not the only mishaps that day. There was also the Taser incident.

Helen and Cindy grabbed the last Xbox One Console (List price \$499; sale price \$250) at the same moment. They fought over the very last of the 50 Xbox consoles that the New City Wal-Mart had for sale. The store manager, knowing that the Xbox was in very high demand, had decided to put the Xboxes on tables where the camper-shoppers would grab the game consoles themselves. Wal-Mart staff stacked the Xboxes on tables that were underneath video cameras. The store manager chose this location because he anticipated that the recorded video of his customers running for and grabbing the Xboxes would be entertaining to watch after Black Friday ended. By contrast, the electronics department manager handled the distribution of

televisions differently. The electronics manager kept the boxes containing the flat screen televisions behind a counter and handed them to the customers who wanted them.

Helen and Cindy reached the table where the Xboxes were stacked at the same moment. There was one Xbox left. Helen grabbed the last Xbox with her left hand just a fraction of a second before Cindy grabbed the Xbox with her own right hand. Helen yelled “That’s my Xbox!” While still holding onto the Xbox, Helen swung a punch at Cindy with her right hand. The last thing that Helen remembers is a blue flash and a crackling sound. Helen hit the floor with a thud as her legs gave out beneath her. Doctors think that Helen may suffer permanent neck injury from the compression of one of the disks in her neck--an injury that happened as she hit the floor. The doctors expect, however, that Helen’s torn rotator cuff will heal fully after surgery and rehabilitative therapy.

The store’s security video--as well as a YouTube video that a customer recorded and posted to the Internet--show that after Helen’s punch, Cindy pulled a taser from her purse and zapped Helen in the neck. The store’s video show Cindy smiling as she holds the XBox One above her head while she pumps her fist (still holding the taser) in the air. Later, Cindy reported to the emergency department of the hospital, where doctors discovered that Cindy’s jaw had a hairline fracture that would require her to have her jaw wired shut for six weeks. At the hospital, the police arrested Cindy for assaulting Helen.

Paramedics took Blind Paul Petraeus, Junior, Junior’s mother, and Helen to area hospitals. The New City Wal-Mart set a one-day record for gross revenue.

**Your job:**

**Your job is to analyze the tort claims (along with defenses and damages) that arise from the injuries of Blind Paul Petraeus, Happy, Junior, Cindy, and Helen.**

Do not analyze any criminal law issues, products liability claims, or claims against any government entity. Keep in mind that this is a Torts exam not a Contracts exam.

The following appendixes set forth some of New City's ordinances and Newstate's statutes that may or may not prove to be relevant or useful. Appendix 1 includes New City ordinances. Appendix 2 includes Newstate Statutes.

**Appendix 1: New City Ordinances**

**Ordinance A. Unauthorized camping on public or private property prohibited.**

- (a) It shall be unlawful for any person to camp upon any private property without the express written consent of the property owner or the owner's agent, and only in such locations where camping may be conducted in accordance with any other applicable New City law.
- (b) It shall be unlawful for any person to camp upon any public property except in any location where camping has been expressly allowed by the officer or agency having the control, management and supervision of the public property in question.
- (c) For purposes of this section:
  - (1) "Camp" means to reside or dwell temporarily in a place, with shelter. The term "shelter" includes, without limitation, any tent, tarpaulin, lean-to, sleeping bag, bedroll, blankets, or any form of cover or protection from the elements other than clothing. The term "reside or dwell" includes, without limitation, conducting such activities as eating, sleeping, or the storage of personal possessions.
  - (2) "Public property" means, by way of illustration, any street, alley, sidewalk, pedestrian or transit mall, bike path, greenway, or any other structure or area encompassed within the public right-of-way; any park, parkway, mountain park, or other recreation facility; or any other grounds, buildings, or other facilities owned or leased by New City or by any other public owner, regardless of whether such public property is vacant or occupied and actively used for any public purpose.

**Ordinance B. Vicious dogs.**

(a) No person owning or harboring any pit bull or any other dog subject to this Section pursuant to subdivision shall within the limits of the New City allow or permit such dog, whether licensed or not, to be upon the public streets, public sidewalks, public parks, or any other public place within New City, or upon any private property that is not fully enclosed by fence or other barrier, except when muzzled and held under leash by an able bodied person.

(b) For purposes of this statute, "pit bull" means any pit bull terrier of the Staffordshire Bull Terrier, American Staffordshire Terrier, or American Pit Bull Terrier breed of dog or any mixed breed of dog that contains as an element of its breeding the breed of Staffordshire Bull Terrier, American Staffordshire Terrier, or American Pit Bull.

**Appendix 2: Newstate Statutes**

**Statute 1. Comparative negligence.**

The contributory negligence of any party in a civil action shall not bar such party or such party's legal representative from recovering damages for negligence resulting in death, personal injury, property damage or economic loss, if such party's negligence was less than the causal negligence of the party or parties against whom claim for recovery is made, but the award of damages to any party in such action shall be diminished in proportion to the amount of negligence attributed to such party. If any such party is claiming damages for a decedent's wrongful death, the negligence of the decedent, if any, shall be imputed to such party.

**Statute 2. Pro rata liability of defendants.**

(a) In an action brought as a result of a death or an injury to person or property, no defendant shall be liable for an amount greater than that represented by the degree or percentage of the negligence or fault attributable to such defendant that produced the claimed injury, death, damage, or loss.

(b) Any provision of the law to the contrary notwithstanding, the finder of fact in a civil action may consider the degree or percentage of negligence or fault of a person not a party to the action, based upon evidence thereof, which shall be admissible, in determining the degree or percentage of negligence or fault of those persons who are parties to such action.

(c) The jury shall return a special verdict, or, in the absence of a jury, the court shall make special findings determining the percentage of negligence or fault attributable to each of the parties and any persons not parties to the action to whom some negligence or fault is found and determining the total amount of damages sustained by each claimant. The entry of judgment shall be made by

the court based on the special findings, and no general verdict shall be returned by the jury.

**Statute 3. General limitation of actions--three years.**

The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within three years after the cause of action accrues, and not thereafter:

- (a) Tort actions, including but not limited to actions for negligence, trespass, malicious abuse of process, malicious prosecution, outrageous conduct, interference with relationships, and tortious breach of contract.
- (b) All actions involving the operation of motor vehicles;
- (c) All actions, regardless of the theory asserted, against any veterinarian;
- (d) All actions for wrongful death.
- (e) All actions against any public or governmental entity or any employee of a public or governmental entity for which insurance coverage is provided.
- (f) All actions against any public or governmental entity or any employee of a public or governmental entity.
- (g) All other actions of every kind for which no other period of limitation is provided.

**Statute 4. General limitations of actions--two years.**

The following civil actions, regardless of the theory upon which suit is brought, or against whom suit is brought, shall be commenced within two years after the cause of action accrues, and not thereafter:

- (a) The following tort actions: Assault, battery, false imprisonment, false arrest, libel, and slander;
- (b) All actions for escape of prisoners;
- (c) All actions against sheriffs, coroners, police officers, firefighters, national guardsmen, or any other law enforcement authority;
- (d) All actions for any penalty or forfeiture of any penal statutes;
- (e) All actions for fraud, willful misrepresentation, deceit, or conversion of trust funds.

**END OF EXAMINATION**



Many students--indeed, nearly every student--started the exam with a long list of general notes about Tort law. I do not know why so many students did this. I found it irritating, but because so many students did the same thing, I could not lower everyone's grade for violating my instructions about general discussion law and/or starting with defenses. In the future, I hope that my students will not include these long lists at the start of their exam and that they will include the points they might otherwise make in these lists in the body of their answers.

## **GENERAL:**

Collateral source rule – If Newstate recognizes collateral source rule, plaintiffs entitled to recovery can't have recovery diminished because of payments made by health insurance or outside sources.

Respondeat Superior – Cases against Wal-Mart name corporation as defendant because employees' negligence occurred within course of employment.

- Likely, individual employees, unlike corporation, don't have adequate insurance to cover damages.

Damages – Facts not specific so damages are “as needed.” Present Value especially important for Junior's future damages.

SOL – All cases have defense of statute of limitations. Negligence cases must be brought in 3 years from cause of action.

## **PETRAEUS v. WAL-MART**

### **Duty:**

Wal-Mart was active so it had duty to be reasonable.

Invitee: Petraeus entering Wal-Mart to do business (buy TV, presumably for sound) elevated duty.

Duty to Protect/Rescue: Wal-Mart:

- (1) Had Business-Customer relationship with Petraeus, and
- (2) Created peril (riled up crowd)

**SOC:**

To Invitees: Use reasonable care in maintaining premises, warn of dangers of which employees knew/should have known. Eliminate danger if burden to prevent injury less than probability for injury times potential liability ( $B < PL$ ).

Protect patrons from criminal activity of others and from harm Wal-Mart created.

Rescue Petraeus after fall.

**Breach:**

Failed to warn Petraeus of oily floor. Employees saw Petraeus and Happy so they knew/should have known Petraeus was blind and should have verbally warned him of hazard or remedied situation by mopping floor. ( $B < PL$  so warning alone probably inadequate.)

Failed to protect by adding to excitement/hysteria (by counting down over intercom) creating “all’s-fair-in-love-and-Wal-Mart” environment, but not attempting to control crowd.

Didn’t attempt rescuing Petraeus despite special relationship, and despite facilitating unruliness and slip hazards.

Breached Statutory Duty to train employees in crowd control/maintenance procedures, if Newstate has statute describing training/working guidelines to protect customers.

**CIF:**

But for Wal-Mart's failure to clean floor, Petraeus wouldn't have sustained injury.

But for Wal-Mart's failure to protect from crowd, Petraeus's injuries wouldn't have been as great, including Happy biting Junior.

But for Wal-Mart's failure to rescue Petraeus, injuries wouldn't have been as great.

To "keep his pants up" in court, Petraeus will argue negligent omissions to clean, warn, protect, rescue were substantial factors to injuries.

**PC:**

It's foreseeable that oily floor and unruly crowd could cause fall and injury.

**Damages:**

Compensatory – "make Petraeus whole":

Specific:

Past:

Medical expenses: treating broken leg, arm, ribs

Surgery

Physical therapy

Therapy: PTSD/depression

Prescriptions: pain/amplified PTSD

Wage loss

Property damage

Future:

Same + Equipment like cane for limp

Loss of earning capacity

New dog

General:

Past:

Pain/suffering: injury/medical work.

Loss of enjoyment: amplified PTSD, losing Happy, walking with limp.

Loss of consortium

Future:

Same + Pain/suffering from therapy, healing, limp.

Punitive – “punish”/prevent future negligence:

Wal-Mart acted negligently and recklessly. Black Friday sales are basically attractive nuisances enticing many consumers, and notorious for injury. Wal-Mart should pay punitive damages, appropriate for size of wealth, to prevent negligence/promote safer conditions.

**Defenses:**

1. Wal-Mart only has duty to protect if there is high rate of similar incidences and imposing duty won't present crushing liability.
2. Wal-Mart doesn't have duty to rescue if attempting rescue risks further death or bodily harm because Happy could attack or rescuers could be trampled.

Wal-Mart likely wins this defense but injuries from breach of duty to clean premises and breached protection are indivisible from breach of rescue.

3. Non-Party at fault: Individual "trampers" responsible for Petraeus's injuries. Wal-Mart cannot be liable for damage caused by crowd (Statute 2(b)). Crowd is superseding cause breaking causation chain.

But trampling was occasioned by Wal-Mart's negligence so trampers are mechanism of injury and mechanism needn't be foreseeable. Plus, Wal-Mart is responsible for criminal conduct of consumers (if there's duty to protect).

4. Comparative Fault: Wal-Mart can bar recovery if Petraeus was more negligent than Wal-Mart. Petraeus wasn't adequately equipped because he only had seeing-eye dog. Damages possibly reduced because amplified PTSD and Happy's death were caused by Petraeus's negligence coming to chaotic event w/non-muzzled dog.

“If law works,” this defense fails. Petraeus is only inadequately equipped because of negligent conditions created by Wal-Mart. Having seeing-eye dog is consistent w/blind RPP. Wal-Mart must take victims as it finds them, even ones likely to succumb to PTSD.

5. Assumed risk: Petraeus knew event would be chaotic/loud but still went, implicitly assuming risk.

But shopping isn't inherently dangerous. Only risky because of Wal-Mart's negligence. Petraeus didn't know of and voluntarily assume risk of slipping/trampling.

## **JUNIOR/MOTHER v. WAL-MART/PETRAEUS**

Junior/Mom name Wal-Mart/Petraeus joint and severally liable because defendants acted individually causing single injury.

Plaintiffs can only collect from defendant amount for which defendant is liable. If Petraeus is insolvent, Junior/Mom cannot collect remainder from Wal-Mart (Statute 2(a)).

But naming defendants jointly liable will cause defendants to paint each other as negligent, doing plaintiffs' job.

Junior's case (physical injury) and Mom's case (negligent infliction of emotional distress) flow from same facts so they're analyzed together.

### **JUNIOR/MOM v. WAL-MART**

#### **Duty:**

Wal-Mart was active, so it must be reasonable. Duty elevated because Junior/Mom were invitees.

#### **SOC:**

Inspect/warn invitees of hazards employees should have known about. Possibly remove hazard.  
(See Petraeus.)

#### **Breach:**

Employees saw Happy, should have reasonably inquired about muzzle, and warned patrons of dog. Burden to tell Petraeus dog needs muzzle was less than probable harm times potential liability so warning Junior/Mom is inadequate.

Breached statutory duty if "harboring" in Ordinance B includes having animal on one's property because ordinance requires people *harboring* pit-bulls to muzzle dogs.

**CIF** :

But for Wal-Mart's failure to remove un-muzzled dog from premise/failing to warn patrons, Junior wouldn't have been bitten/Mom wouldn't have been traumatized.

Alternatively, Wal-Mart's negligent omission was substantial factor of Junior's injuries/Mom's distress.

**PC**:

Junior's/Mom's injuries are not so far attenuated from Wal-Mart's negligence as to preclude PC. Foreseeable that allowing dangerous dog on property un-muzzled could result in dog biting someone and anyone with special relationship to victim would be traumatized.

**Damages**:**Junior:**Compensatory:Specific:Past:

Medical bills

Surgery, stitches

Medication: Pain/infection

Physical/Emotional therapy

Future:

Medical bills, treatment

Medication

Equipment to compensate hand

Loss of earning capacity (for practical job, not MLB pitcher unless reasonable)

Therapy (physical/emotional)

General:Past:

Pain/suffering: injury, treatment

Embarrassment

Loss of enjoyment: not using dominant hand, emotional trauma

Future:

Pain/suffering: injury/future treatment

Loss of enjoyment: Not pursuing dream job/ losing use of hand

Loss of consortium

**Mom:**Compensatory:Specific:Past:

Travel/lost wages: taking Junior hospital/treatment

Emotional therapy

Future:

Travel/lost wages: taking Junior to treatment

Compensation for helping child adapt to loss of hand use

Therapy

Lost earning capacity

General:Past/Future:

Pain/suffering

Loss of enjoyment

Depression

**Defenses:**

1. SOC: Wal-Mart may claim it didn't have duty to warn of or remove dog because it was seeing-eye dog, trained for use in public.

But it's reasonable to inquire about dog's muzzle and a risk Wal-Mart *should have known* about.

2. Intervening Cause: Rush of crowd is intervening cause that caused dog to become defensive.

But mechanism needn't be foreseeable. Letting un-muzzled dog on property has foreseeable consequence of a bite, even without crowd (that Wal-Mart riled).

### Against Junior

3. Comparative Fault: Junior was comparatively at fault because he negligently reached in direction of dog that most likely displayed aggressive behavior.

But Junior should be compared to RPP of same age, experience, intelligence. Reasonable 9-year-old can't fully understand risk of pit-bull nearby.

### Against Mom

4. Impact Rule: Mom wasn't harmed by Wal-Mart's negligence so she cannot recover for mental distress. Success of defense depends on extent to which Newstate recognizes Zone of Danger/Impact Rule and if punching counts as impact.

Mom rebuts saying she was impacted when punching Happy, or at least in Zone-of-Danger. Even meets *Legg* requirements.

5. Comparative Fault: Mom acted outside RPP standard because she didn't protect child. Special relationship w/Junior gave her duty to monitor child/keep him from harm, especially in chaotic setting.

If true, Mom says she's only 5-10% at fault, not nearly to extent Wal-Mart and Petraeus were negligent in allowing hazard into store.

## JUNIOR/MOM v. PETRAEUS

### *Duty:*

Petraeus was active so he had duty to act as RPP.

### *SOC:*

To act as RPP “who takes (brail) magazines at home.”

Statutory duty: muzzle Happy.

### *Breach:*

Petraeus negligently brought Happy to crowded place when it was likely to be loud/chaotic.

Reasonable person would have refrained from taking dog or muzzled dog.

Petraeus breached statutory duty by violating Ordinance B requiring pit-bulls to be muzzled.

Ordinance is to protect people like Junior/Mom from harm like bites/trauma. Mistake of law no defense.

### *CIF:*

But for Petraeus’s failure to muzzle Happy, Junior wouldn’t have sustained injury and Mom wouldn’t have been traumatized by Junior’s injury.

Petraeus’s negligence is at least substantial factor in Junior’s/Mom’s injuries.

**PC:**

Junior's injuries/Mom's emotional distress not attenuated from Petraeus's negligence. Foreseeable not muzzling Happy would result in bite (reason Ordinance B exists) and someone nearby would be traumatized by attack.

**Damages:**

Same damages for which Wal-Mart is liable.

**Defenses:**

1. Intervening Cause: see #2 above.
2. Petraeus didn't know of Happy's aggressive disposition in chaotic settings.

But he should have known so still liable. Nevertheless, statutory duty requires muzzle.

3. Comparative Fault By Junior and Mom: see #3/ #5 above
4. Impact Rule: see #4 above

## **HELEN/CINDY v. WAL-MART**

Helen/Cindy have cases against each other and both will name Wal-Mart as joint and severally liable like Junior/Mom so each defendant will point fingers at other. Wal-Mart can't be forced to indemnify more than it's liable.

The cases against Wal-Mart will be analyzed together because same facts apply to both.

### **Duty:**

Wal-Mart owes Helen/Cindy duty of RPP, elevated because Helen/Cindy are invitees.

Wal-Mart may have duty to protect (See Petraeus).

### **SOC:**

Wal-Mart has duty to inspect/warn of hazards.

Must protect customers from criminal conduct of other patrons (requires showing high rate of similar incidences [See Petraeus]).

### **Breach:**

Breached RPP:

- (1) Facilitating environment of chaos (see Petraeus).
- (2) Placing Xboxes on table knowing there'd be rush. Did this to be entertained by chaos.

Reasonably prudent store would place products behind counter (inexpensive solution evidenced by fact TV sales were handled as such).

Breached duty to protect: implicitly encouraging customers to run/grab Xboxes without instilling crowd control measures like orderly lines.

Wal-Mart breached statutory duty if statute requires security/guidelines for crowd control/safety precautions.

**CIF:**

But for Wal-Mart's facilitation of chaos, Helen/Carol wouldn't have been hurt.

But for Wal-Mart's failure to mitigate chaos through crowd control/proper sales techniques, Helen/Carol wouldn't have been hurt.

Alternatively, Wal-Mart's negligent actions/omissions were substantial factors in Helen/Carol's injuries.

**PC:**

Helen/Carol's injuries not so far attenuated from Wal-Mart's negligence as to preclude PC. It's foreseeable that facilitating chaos by encouraging patrons to grab for limited number of goods would cause fights/injury, especially if there's high rate of similar incidents.

Rewinding “video-tape of life” shows that, had Wal-Mart controlled the crowd and placed Xboxes behind counter, Helen/Cindy wouldn’t have fought/been injured.

**Damages:**

**Helen:**

Compensatory:

Specific:

Past:

Hospital bills, ER visit, subsequent appointments, X-rays

Medication

Future:

Surgery: rotator cuff

Rehabilitative therapy: rotator cuff/neck

Hospital bills

Medication

Sling/Equipment: rotator cuff/neck injury

Lost earning capacity

General:

Past:

Pain/suffering

Loss of enjoyment

Loss of consortium

Future:

Same as Past

Punitive: See Petraeus

**Cindy:**

Compensatory:

Specific:

Past:

Same as Helen

Future:

Same as Helen (no surgery/therapy)

Medical equipment wiring jaw

Products to facilitate eating/living w/wired jaw

General:

Past:

Same as Helen

Embarrassment: wired jaw

Future:

Same as Helen

Punitive: See Petraeus

**Defenses:**

1. Duty to Protect: Wal-Mart will argue they don't owe duty to protect from negligence or intentional torts of patrons. (See Petraeus.)

Helen/Cindy must show high rate of similar incidences, make policy arguments to show Wal-Mart must promote safer, cordial shopping environments.

2. Proximate/Superseding Cause: Wal-Mart will try to show counting down and putting products on table did not cause fight and injuries sustained were not foreseeable consequences of Wal-Mart's actions.

Likely court will find Wal-Mart facilitated and contributed to hazardous environment of fighting and "alls-fair" mentalities that lead to injuries.

3. Comparative Fault: Wal-Mart will argue both Helen and Cindy were more negligent than Wal-Mart. For Helen, swinging punch at Cindy was outside RPP standard and Helen brought on injury Helen sustained. For Cindy, fighting over Xbox was outside RPP standard, causing her injury.

As long as Wal-Mart can show plaintiffs' negligence was greater than Wal-Mart's, plaintiffs cannot recover from Wal-Mart.

## **HELEN/CINDY v. EACH OTHER**

Helen/Cindy have strong cases for intentional torts and can argue battery. Each suffered intentional, harmful contact from other, causing injury. But arguing intentional tort may preclude either plaintiff from collecting from other's insurance policy or Wal-Mart's insurance. Also, SOL of intentional torts is 2 years (Statute 4). SOL for negligence is 3 (Statute 3), giving them an extra year.

Best chance of recovery is to argue negligence so that will be analyzed below. The case is not as strong as it would be for battery and precludes Cindy from arguing self-defense.

### **Duty:**

Helen/Cindy were active so they had duty to other of RPP.

### **SOC:**

Both should act as RPP.

*Cindy's Claim:* Helen may have statutory duty to avoid harmful contact like punches.

*Helen's Claim:* Cindy may have statutory duty not to use weapons unnecessarily/inside Wal-Mart.

### **Breach:**

Both claim other violated RPP standard (and need to rethink life for fighting over Xbox).

*Cindy's Claim:* Helen unreasonably swung fist for Xbox. Reasonable person wouldn't punch to get Xbox. This may be violation of statutory duty to not punch unnecessarily.

*Helen's Claim:* Cindy unreasonably used Taser to get Xbox. This may breach statutory duty if Newstate has statute forbidding Tasers or their usage except in reasonable self-defense. Cindy is NPS if Wal-Mart does not allow Tasers on property and Cindy knew/should have known.

### **CIF:**

*Cindy:* But for Helen negligently punching Cindy, Cindy wouldn't have sustained injury. Helen's negligent misfeasance is at least substantial factor in Cindy's injury.

*Helen:* But for Cindy's use of a Taser, Helen wouldn't have sustained injury. Cindy's negligent Taser usage is at least substantial factor in Helen's injuries.

### **PC:**

*Cindy:* It's foreseeable that negligently throwing a punch could cause a broken jaw.

*Helen:* It's foreseeable that negligent use of Taser would injure someone, including causing a fall. Neck/rotator cuff injury is foreseeable result of Taser-induced fall.

### **Damages:**

See Cindy/Helen v. Wal-Mart.

**Defenses:**

1. Wrong Case Classification: Both can argue evidence establishes battery, not negligence so plaintiff in each case needs to prove elements of intentional tort. If presented at close of evidence, this may warrant new trial. Battery would allow Cindy to argue Self-Defense.

Self-Defense, if battery case, is unlikely to succeed because Cindy raised arms above head, smiling. She didn't fear injury but wanted Xbox. This is imperfect defense of property Cindy didn't yet own.

2. Comparative Fault: Both will argue the other was negligent because she fought over Xbox and brought about harm, violating RPP standard.

Cindy can argue her negligence isn't foreseeable, proximate cause of being punched. Helen can't argue this because punching foreseeably has result of retaliation.

3. Foreseeable Harm: Cindy may argue *type* of harm not foreseeable because "whoda thunk" Taser zap to neck would cause irreparable spinal compression/torn rotator cuff?

But that's *extent* issue, which needn't be foreseeable, just that Taser may cause injuries including fall-related.

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**Miscellaneous:**

Since Happy was a dog, regrettably Paul cannot bring suit for Happy's claims.

It is unclear whether Wal-Mart owns or occupies the land and building, and whether the sidewalk is public or private. See below.

Since Wal-Mart is a business, the status of the shoppers of invitees, licensees, or trespassers will not be addressed.

No government entity is at issue, and thus is not addressed.

Generally intentional torts are not covered by insurance. Good lawyers try to argue negligence so that men and women in suits show up with a duty to defend. In this case, the plaintiffs with intentional torts claims would have a higher likelihood of recovering for their injuries by pursuing negligence claims against Wal-Mart in order to dip into their trashcan of money.

As the incident occurred one month ago, the statute of limitations defenses are unavailable to defendants.

**Paul v. Wal-Mart (Negligence)**

***Duty:***

Wal-Mart and its employees had a duty to be reasonable when they were active. If New State is like some jurisdictions, a special relationship exists between Paul and Wal-Mart because some jurisdictions recognize store-customer relationships, as there is a duty to protect relations of dependence or mutual dependence.

Additionally, Wal-Mart owed a duty to Paul because the staff member undertook acting when she discovered the slippery spot on the floor but decided to simply put a pylon over it instead of cleaning it. If others saw the staff putting up the pylon, it is likely that

they assumed that she was fixing the danger, and there was no need for them to do it. The staff created the peril that someone would slip on the spot by not cleaning it.

***Standard of Care (SoC):***

The SoC is a reasonably prudent person (RPP) unless the statute defines it otherwise. The RPP is the person who mows the lawn in his or her shirtsleeves and takes his or her magazines at home.

***Breach:***

Paul will argue that Wal-Mart breached its SoC to him because it did not act as an RPP (or business) would to exercise sufficient safety precautions on Black Friday. By allowing customers to camp out outside the store, build into an uncontrollable line, and not provide safe conditions within the store were all breaches of the SoC. Wal-Mart did not act reasonably and thus breached the SoC.

***Negligence Per Se (NPS):***

Wal-Mart violated Ordinance A because if the sidewalk and parking lot are private, there is no evidence that the shoppers had the express written permission of Wal-Mart to be there. Additionally, there is no indication that the shoppers were camping in accordance with the other laws in New State.

If the sidewalk and parking lot are public, the campers were there illegally unless it was expressly allowed by agency having control and supervision of public property. If Wal-Mart is considered to be the supervising agency, they owed duty to supervise and permit individuals to be there.

***Cause-In-Fact (CIF):***

“But-for” (standard for CIF analysis) Wal-Mart breaching their SoC owed to Paul, Paul would not have been injured.

Wal-Mart allowed the crowd to break the law by camping out, growing unruly before entering the store, allowing the crowd to storm the store, and the employee not sufficiently cleaning up the slippery spot on the floor.

***Proximate Cause (PC):***

Given Black Friday’s dark history, it was reasonably foreseeable for someone to be injured. First, the Wal-Mart employees allowed the shoppers to camp outside, grow to an unmanageable level outside, and allowed the shoppers to run in through the doors. Management confirmed with shoppers several times when the store would open. The manager and assistant managers watched the crowd from inside and eventually watched only on video because they were afraid of the fervor of the shoppers. Although an intervening cause, it was foreseeable that the crowd would be out of control and Wal-Mart did not take any action to prevent it.

It was reasonably foreseeable that another person would slip on the oily spot on the floor if the assistant manager slipped on it and the staff did not clean it.

Finally, it was reasonably foreseeable that Paul could be injured because of his disability. The assistant manager saw Paul waiting in the unruly line and told the manager that Paul and Happy were both there. If the managers were afraid of the crowd inside the store and Paul was at the front of the line, it was foreseeable that Paul could be injured once the crowd pushed him into the store.

***Damages:***

	Past	Future
General	<ul style="list-style-type: none"> <li>• Medical expenses.                             <ul style="list-style-type: none"> <li>○ Broken left leg.</li> <li>○ Broken right arm.</li> <li>○ Cracked ribs.</li> </ul> </li> <li>• Property loss.                             <ul style="list-style-type: none"> <li>○ Cost of Happy.</li> <li>○ \$540 discount on TV.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Medical expenses.                             <ul style="list-style-type: none"> <li>○ Treatment of limp.</li> <li>○ PTSD drugs ineffective.</li> </ul> </li> </ul>
Special	<ul style="list-style-type: none"> <li>• Pain and suffering.</li> </ul>	<ul style="list-style-type: none"> <li>• Fear of loud noises and shouting.</li> <li>• Depression from losing Happy.</li> </ul>

**Defenses:**

The defense will argue “whoddathunk” that Paul would trip on the pylon and be injured in the store.

According to Statute 1, Wal-Mart may argue that Paul’s negligence was contributory because he did not take reasonable precautions to protect himself from the crowd. The defense will argue that a reasonable blind person with Paul’s conditions would not have subjected himself or herself to the risks associated with Black Friday. If Wal-Mart can prove that Paul’s negligence was the CIF and PC of his damages, Wal-Mart must be found not guilty. This will likely not happen in this case.

Also, Wal-Mart will argue that Paul assumed the risk of going to the sale and had conscious knowledge of the risk of a dangerous crowd due to public knowledge about Black Friday, but chose to go anyway.

Finally, Wal-Mart will argue that it is impossible to tell which of Paul’s psychological damages resulted from the incident and which he had ahead of time. If it cannot be determined that the injuries were caused or worsened by the incident, Paul cannot recover for them

***Insurance/Strategy:***

Paul should emphasize the CIF and PC factors concerning Wal-Mart's liability in order to access the trashcan of money belonging to Wal-Mart. While it was perhaps more dangerous for Paul to go to Black Friday than the average man or woman, he should not be deprived of the modern American tradition simply because Wal-Mart does not take foreseeable precautions to protect its patrons.

**(Representative for) Junior v. Paul (Negligence)**

***Duty:***

Paul was active when he was at the store, and thus had a duty to be reasonable.

***SoC:***

Since Paul is blind and he relied on his guide-dog, Happy, the jury should evaluate whether Paul was acting as a reasonable person with Paul's conditions would.

***Breach:***

Paul was not acting reasonably when he took Happy to the store knowing that it would be extremely busy with many people. He was not reasonably in control of Happy.

***NPS:***

Paul broke Ordinance B by not having Happy muzzled in Wal-Mart. Junior and Junior's mother could also argue that Paul violated Ordinance B because he is not an able-bodied person and was unable to control Happy.

***CIF:***

But for Paul breaching the SoC and not controlling Happy, Junior would not have been injured.

**PC:**

It was foreseeable for Happy to bite someone under high anxiety circumstances when Paul was not in control. Paul should have foreseen that the circumstances would be such that Happy could get worked up and injure another customer within the store. While Paul may not have foreseen falling down on the pylon, he should have generally been aware of the risk of falling with the high volume of people at Black Friday.

**Damages:**

	Past	Future
General	<ul style="list-style-type: none"> <li>• Medical expenses.                             <ul style="list-style-type: none"> <li>○ Lost use of right hand from nerve damage.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Medical expenses.                             <ul style="list-style-type: none"> <li>○ Any future rehabilitative expenses.</li> </ul> </li> <li>• Earnings                             <ul style="list-style-type: none"> <li>○ Wanted to be major league baseball player.</li> <li>○ Other future lost wages from a job where Junior would need to use his hand.</li> </ul> </li> </ul>
Special	<ul style="list-style-type: none"> <li>• Pain and suffering.</li> </ul>	<ul style="list-style-type: none"> <li>• Future pain and suffering.</li> </ul>

**Defenses:**

Under Statute 1, Paul could argue that Junior’s negligence in attempting to help Paul when Happy was barking and growling at him was comparatively negligent (knife-to-the leg). Paul will argue that Junior was more at fault than Paul, but the jury will diminish Junior’s recovery in proportion to the amount of negligence attributed to Junior.

With regard to PC, the defense will argue “Whoddathunk?” that Paul would have fallen down in the store and that Happy would react so adversely?

Paul can also argue that Junior assumed the risk of being bitten by approaching Happy to help Paul, but generally assumption of risk is not applicable for a juvenile.

***Insurance/Strategy:***

Paul likely does not have the trashcan of money that Wal-Mart has to compensate victims, so Junior and his mom would be better served trying to sue Wal-Mart.

**(Representative for) Junior v. Wal-Mart**

***Duty:***

See “Duty” under Paul above.

***SoC:***

See “SoC” under Paul above.

***Breach:***

See “Breach” under Paul above.

***NPS:***

See “NPS” under Paul above.

***CIF:***

But for Wal-Mart breaching the SoC, letting the crowd get out of control, and not sufficiently cleaning up the slippery spot under the pylon, resulting in Paul falling, Paul would not have fallen and Happy would not have been worked up and would not have bitten Junior.

***PC:***

Since the assistant manager saw Paul and Happy outside and informed her manager of their presence as they observed the surging crowd outside, it was foreseeable that an incident could occur between a member of the massive crowd and Happy. The extent of the injury need not be foreseeable.

***Damages:***

See Junior's damages in chart above.

***Defenses:***

Under Statute 1, Wal-Mart could argue that Junior's negligence attempting to help Paul when Happy was barking and growling at him was comparatively negligent (knife-to-the-leg). Wal-Mart will argue that Junior was more at fault, but the jury will diminish Junior's recovery in proportion to the amount of negligence attributed to Junior.

The defense to PC: "Whoddathunk?" that Paul would have fallen down in the store and that Happy would react so adversely? Not a foreseeable Black Friday injury for Junior since most Black Friday injuries are a result of the crowds, not dogs.

Wal-Mart can also argue that Junior assumed the risk of being bitten by approaching Happy to help Paul, but generally assumption of risk is not applicable for a juvenile.

Finally, the defense can argue that Paul was more responsible, either jointly or severally, then Wal-Mart.

***Insurance/Strategy:***

Since Wal-Mart has a bigger trashcan of money than Paul, it would be most advantageous for Junior to try to collect damages from Wal-Mart.

**Junior's Mother v. Paul/Wal-Mart:**

Junior's mother suffered emotional damages as a result of witnessing her son be attacked by Happy. See arguments for Junior above.

However, there is no indication of whether the trauma has manifested in physical form. Generally, if there is no physical manifestation of harm, a plaintiff cannot recover.

### **Cindy v. Helen**

#### ***Duty:***

When active, be reasonable. Helen had a duty to be reasonable when she was shopping and interacting with others.

#### ***SoC:***

The SoC is an RPP. Helen should have acted like a reasonably prudent person when in Wal-Mart.

#### ***Breach:***

Helen breached the SoC and did not act like an RPP would who was trying to get ahold of an Xbox One. An RPP would not punch another to get an Xbox.

#### ***Assault and Battery:***

Cindy will allege that Helen is guilty of assault because Helen yelled at Cindy and swung a punch at Cindy. Helen's action reasonably caused Cindy apprehension of immediate harmful or offensive contact. Since assault is an intentional tort, Cindy must show that Helen desired the result of her actions or that her actions would cause apprehension of immediate harmful or offensive contact.

Cindy will allege that Helen is guilty of battery because Helen intentionally caused harmful or offensive contact on Cindy's person when Helen punched Cindy. Cindy does not need to prove that Helen intended to harm Cindy, just to cause harmful or offensive

contact, which she did by punching Cindy for the Xbox. Cindy must also show that Helen’s direct or indirect actions caused her injuries; which is fairly obvious they did since Helen intentionally punched Cindy.

**Damages:**

	Past	Future
General	<ul style="list-style-type: none"> <li>• Medical expenses.                             <ul style="list-style-type: none"> <li>○ For wiring jaw shut.</li> </ul> </li> <li>• \$249 in Xbox savings (if she didn’t get the Xbox).</li> </ul>	<ul style="list-style-type: none"> <li>• Medical expenses.                             <ul style="list-style-type: none"> <li>○ Subsequent medical expenses.</li> </ul> </li> <li>• Lost Wages                             <ul style="list-style-type: none"> <li>○ If Cindy worked, she may have some lost wages resulting from having her mouth wired shut for six months.</li> </ul> </li> </ul>
Special	<ul style="list-style-type: none"> <li>• Pain and suffering.</li> </ul>	<ul style="list-style-type: none"> <li>• Future pain and suffering.</li> </ul>

**Defenses:**

Helen may argue that she acted in self-defense toward Cindy, but the jury will likely not be persuaded by this argument because Helen threw the first punch. There is no proof that Helen reasonably believed that force was necessary to prevent an attack.

**Insurance/Strategy:**

Since insurance is not available for intentional torts, it would be good lawyering for Cindy’s attorney to go after Wal-Mart for negligence. If Cindy can show that Wal-Mart was negligent because they did not adequately manage the crowd and that it was foreseeable that there would be a traditional Black Friday incident because they broke the statute allowing crowds to camp out and were at times afraid of the crowd outside the doors.

Cindy’s lawyer should also argue that the managers of Wal-Mart intentionally put the Xboxes out in a place where it was foreseeable that a conflict would occur, and they could have kept the Xboxes behind the counter. If Cindy’s lawyer is effective in these claims, men and women in suits will need to show up to defend Wal-Mart’s trashcan of money.

**Helen v. Cindy**

***Duty:***

When active, be reasonable. Cindy had a duty to be reasonable when she was shopping and interacting with Helen in Wal-Mart.

***SoC:***

The SoC is a RPP. Cindy did not act like an RPP.

***Breach:***

Cindy breached the SoC and did not act like a reasonably prudent person would who was trying to get an Xbox. An RPP would not punch another to get an Xbox.

***Assault and Battery:***

Helen will allege that Cindy is guilty of assault because the last thing Helen remembers is seeing the blue flash and hearing the crackling sound of Cindy’s taser before she was injured. See requirements to prove assault under “Cindy v. Helen”.

Helen will allege that Cindy is guilty of battery because Cindy intentionally caused harmful or offensive contact when Cindy tased Helen. See requirements to prove battery under “Cindy v. Helen”.

***Damages:***

	Past	Future
General	• Medical expenses.	• Medical expenses.

	<ul style="list-style-type: none"> <li>○ Rotator cuff treatment and surgery.</li> <li>○ Treatment of neck injury.</li> <li>● \$249 in Xbox savings if Cindy didn't have opportunity to purchase.</li> </ul>	<ul style="list-style-type: none"> <li>○ Treatment of permanent neck injury.</li> <li>● Lost Wages             <ul style="list-style-type: none"> <li>○ If Helen worked, lost wages from missing work as a result of the injury.</li> </ul> </li> </ul>
Special	<ul style="list-style-type: none"> <li>● Pain and suffering.</li> </ul>	<ul style="list-style-type: none"> <li>● Future pain and suffering.</li> </ul>

***Defenses:***

See defenses in "Helen v. Cindy" above.

Cindy may also argue that she was acting in self-defense after Helen punched her, she was not justified in using such substantial force.

***Insurance/Strategy:***

See the "Insurance/Strategy" section of Cindy's claim.

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