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**TORT LAW ASSIGNMENT:**

Harold, or Harry, as he was known to his friends, was admittedly a somewhat odd individual. It was well known in the small town in which he lived that Harry developed quite a strong fear and believed “orange is evil.” Ever since he returned from Tennessee, he became quite agitated around people wearing orange shirts. On an otherwise boring afternoon, Larry and Ralph, who were wearing bright orange shirts, went looking for their buddy Harry. When they found him, Harry was riding his new Rockbanger 6000 mountain bike over the Charles River Bridge. They waived large-sticks over their heads and yelled “when the moon is full, we turn you orange!” Harry leaped off his bike and ran away in hysterical fear, bumping into lampposts as he went. As he was running down the street, Harry saw Daryl, who was wearing an orange shirt, walk into Paul’s Camera Shop. Intending to trap what he assumed was one of the evils who had just threatened him, Harry ran to the shop, slammed the door with great force, and quickly barricaded the door with several large recycling drums. Unfortunately, at that very moment, Martha, who had been in the store, started to leave. The slamming door hit Martha in the face, immediately knocking her unconscious and abruptly terminating her modeling career. Paul, thinking the store was under attack by international terrorists, drew his duly licensed .44 magnum (the most powerful handgun in the world) and fired several rounds through the door, hitting Harry (who survived) and hitting several members of a passing band of rock musicians. John, who was standing inside the store next to the door, was struck by several splinters and developed a permanent fear of loud noises as a result of the experience. Identify all of the claims and defenses that might reasonably be asserted by all of the participants in this regrettable drama and explain which claims are likely to prevail and why.

**TORT LAW ANALYSIS:**

Harry v. Larry & Ralph:

The issue here is whether Harry has a cause of action of Assault against Larry and Ralph. Assault is an (i) intentional act by the defendant (ii) which places the plaintiff in reasonable apprehension of (iii) an immediate battery.

Harry’s idiosyncrasies were well known to the denizens of the small town in which he lived. Larry and Ralph, being buddies of Harry, therefore, acted with intent when they went out searching for Harry in orange shirts. They acted with intent when they articulated to Harry their desire to turn Harry orange when the moon is full. They knew that their actions would elicit an apprehensive response. Harry’s belief that “orange is evil” would lead a reasonable and prudent person to conclude that the color orange would place Harry in reasonable apprehension.

Larry and Ralph would argue the contrary; that their actions, while eliciting the reaction they did, does not constitute the intentional tort of assault. Larry and Ralph articulated to Harry their collective desire to turn him orange when the moon is full. This articulation occurred during what was otherwise a boring afternoon; a boring afternoon when the sun was in full array. This strikes out an imminent threat of contact by the tortfeasor against the victim because they said they’d turn him orange “when the *moon* is full”.

Under the standard operating procedure of the third element of assault, Larry and Ralph would be absolved of any wrongdoing. The law is abundantly clear that the threat of contact (the anticipation of a battery) must be imminent; and, that without this operating condition, the assault falls apart. However, there is a ‘special case’ insofar as the determination of assault is concerned: this ‘special case’ is the *mental disturbance* of the plaintiff. The key word which ties the ‘special case’ to tort law is *expectation*. A mentally disturbed person has, by definition, a warped sense of reality affecting his/her perceptions and reactions. It is foreseeable that a mentally disturbed person with an aversion to the color orange would react strongly when confronted with his phobia. But-for the chance encounter that a person (in this case, Harry) with an aversion to the color orange had, his day would have proceeded without a hiccup.

However, Harry’s mental disturbance was enough to warp his perception of reality such that, when confronted by Larry and Ralph, he earnestly expected to be turned orange. Fear is the override in this case; the fear that Harry would be turned orange. And it was this fear – fear grounded in mental disturbance – which, in Harry’s mind, implied an imminent threat of contact. As such, it can be concluded that Larry and Ralph are both liable to Harry for the intentional tort of assault.

Paul & John & Martha vs. Harry:

Harry, in his perturbed state, barricaded the door to Paul’s Camera Shop. The plaintiffs are Paul, Martha, and John. The defendant is Harry. The issue here is whether the act of barricading with several large recycling drums constitutes the intentional tort of false imprisonment. False imprisonment is an intentional act of restraint by the defendant which results in the plaintiff’s confinement to a bounded area for an appreciable amount of time without any reasonable means of escape.

Harry acted with intent when he barricaded the door to Paul’s Camera Shop. Harry’s success in confining by force one of the evils whom he assumed had just threatened him shows that he acted with intent. He blocked the use of the front door with several large recycling drums which served as a direct impediment to movement in and out of the store.

This intentional act resulted in the immediate confinement of Daryl, Martha, and Paul within the shop (a bounded area) for an appreciable amount of time without any reasonable means of escape. For any of the three to dislodge the barricade that Harry erected at the front door, they would either have to exit through the back door and make their way around to the front which is itself a time-consuming process or they would have to break and exit through a window – an unreasonable mode of exit.

Concerning Paul, John, and Martha v. Harry in the matter of false imprisonment, Harry would be liable to all three plaintiffs. Harry would be liable to Paul and John as they are conscious of their false imprisonment. Harry would also be liable to Martha who, although unaware of her false imprisonment (the prompt states that she was knocked out cold the moment the door was barricaded i.e. the moment the store became a “bounded area”), was harmed (knocked her unconscious and abruptly terminated her modeling career) vis-à-vis Harry’s actions thus satisfying the requirement of false imprisonment.  
Martha v. Harry:

The cause-of-action here is whether the act of barricading the door (and its concomitant slamming in Martha’s face) constitutes the intentional tort of battery. Harry believed he observed one of the evils who had recently just threaten him enter Paul’s Camera Shop. As seen above, Harry then acted with intent when he barricaded the door to Paul’s Camera Shop with several large recycling drums. The moment that Harry barricaded the door to Paul’s Camera Shop shut, Martha was immediately harmed (physically mutilated) and rendered unconscious.

Martha would argue that in addition to being falsely imprisoned by Harry (the physical harm she suffered from Harry being constitutive of one of the elements of false imprisonment as seen above), she was also battered by Harry. Battery is an intentional act by the plaintiff that results in harmful, offensive physical contact with the plaintiff’s person. In this case, the door made contact with the plaintiff’s person and resulted in harmful physical contact with her person. Martha would cite Harry’s belief that Daryl, who was wearing an orange shirt, was an evil who had just threatened him and that she just so happened to be in the “line of fire” – although not necessarily the intended recipient of the slammed door, nevertheless made to suffer the consequences of Harry’s intentional act.

Harry would argue that there was no battery as battery is an uncontested intentional act by the plaintiff. Harry intended only to trap one of the evils whom he believed had just threatened him – not to harm, only to trap. Harry, as a result, would argue the tort defense of self-defense. Harry believed that orange-shirted Daryl was one of the evils who had immediately just threatened Harry’s person. Harry believed that the threat was genuine. Harry was in “hysterical fear” running away from aforesaid evil and would argue that he used a reasonable amount of force to neutralize – **not** harm – but, rather, negate the threat to his person which he believed was authentic.

Here, Harry is liable to Martha for battery via the doctrine of transferred intent. Even though Harry did not intend to hit Martha as Daryl was the intended recipient of the barricade, she was, nevertheless, the receiver of Harry’s action.  
Harry v. Paul:

Paul, believing that the store was under attack from international terrorists, discharged his firearm through the door hitting Harry. The issue here is whether Paul discharging his .44 Magnum amounts to an act of battery. Battery is the uncontested intentional act by the defendant that results in harmful offensive physical contact with the plaintiff’s person.

Paul acted with intent when he fired his gun through the door believing that the store was under attack by terrorists. This shows that he acted with intent to stop the terrorists. Here, firing the gun that injures Harry is harmful; namely, a gun which has the ability to cause serious physical injury. The bullet made contact with the plaintiff’s person and, thusly, resulted in harmful physical contact with him.

Paul would argue the defense of privilege. His belief that the store was under attack by international terrorists, who are people who do not recognize the legitimacy of any government, posed a clear and immediate danger to himself and to the patrons of his store. Paul would aver that he used a reasonable amount of force to dispel what he believed to have been certain death.

However, this defense is dubious. One cannot initiate the use of deadly force to dispel an unidentified threat. Deadly force can only be initiate against one who uses deadly force against oneself; one can only employ a reasonable amount of force to dispel an identified threat. Here, Paul’s actions ran athwart tort law and he is, as a result, liable for battery to Harry.

Paul v. Rock Band:

The above is true too for the several members of the rock band who were passing through; Paul, through the principle of transferred intent, is thus liable to these plaintiffs as tortfeasor for the intentional tort of battery. Transferred intent is the principle that if a person intends to hit another person but hits a third person, the first person is liable to the damages suffered by the third person. In this scenario, Paul, through the doctrine of transferred intent, will be liable to having shot (albeit accidentally) the rock band members. There are no defenses Paul could use to counter the claim of the rock band.

John v. Paul:

John, a patron of the store, was struck by several splinters from the discharge of Paul’s .44 Magnum and developed a permanent fear of loud noises as a result of the incident. The issue here is whether Paul is a tortfeasor vis-à-vis the intentional tort of emotional distress. Emotional distress is the psychological injury that the tortfeasor commits against the victim. Emotional distress includes, under its purview, fear.

John would argue that Paul has committed the tort of negligent infliction of emotional distress and is thus liable to him for his development of a fear of loud noises via the impact rule. The impact rule states that there must be some physical injury to accompany the emotional distress for the victim to recover under the negligent infliction of emotional distress. John was struck by splinters from the door when the bullet grazed it. However, the majority of courts have abandoned the impact rule as being too weak to guard against false claims of emotional distress.

Paul would respond with the physical manifestation rule (which the majority of courts have embraced in lieu of the impact rule). Under the physical manifestation rule, it is not sufficient that John was struck by splinters from the discharge of Paul’s .44 Magnum; there has to be a manifestation of objectively verifiable physical symptoms from the alleged emotional distress. None in the scenario above were specified.  
 Consequently, Paul’s liability to John is contingent on whether or not the incident occurred in a state which embraces the impact rule (Paul is liable in a minority of states) or whether the incident occurred in a state which has jettisoned the impact rule for the physical manifestation rule (Paul is absolved of any wrongdoing in a majority of states).