

Essay Question No. 3

Answer this question in booklet #3.

John and his wife, Sally, took walks every night after work. They usually walked through the alley behind the local bookstore. One night, as they walked past the dumpster behind the bookstore, a security guard from the bookstore stopped John and Sally, and he said, "Why don't you stop coming around here? I know you're looking in the dumpster for books. We sell books, we don't give them away." They denied taking any books from the dumpster, but the guard pulled a gun, aimed it at John, and then grabbed John by his scarf to pull him inside the back door of the bookstore.

When the guard raised the gun, Sally thought he was going to shoot her, and she threw herself to the ground. In doing so, Sally knocked her head on the edge of the dumpster and lost consciousness. The guard noticed that Sally had hit her head, but he was more concerned with getting John inside the store.

Once inside, the guard left John in a small room and went to talk to his supervisor. The guard asked another employee to stand next to the door and prevent John from leaving. John was disoriented; he just stood inside the room, trying to collect his thoughts. John didn't try to leave the room, and he did not hear the guard speak to the other employee.

A few minutes later, the guard returned with his supervisor. The supervisor apologized and offered to give John a ride home. John refused and left the bookstore through the backdoor, where he saw Sally lying on the ground, still unconscious.

An ambulance took Sally to the hospital. The guard followed the ambulance to the hospital. He convinced the hospital personnel that he was Sally's husband, and they let him watch while the doctor examined Sally. Sally, who had regained consciousness, protested when she saw the guard watching the examination, but the doctor thought she was confused from the injury to her head.

The doctor determined that Sally had suffered a severe brain injury. He also determined that, had Sally received prompt medical attention after the fall, her injury would have been less severe.

Immediately after the incident involving John and Sally, the supervisor terminated the guard because the guard had pulled his gun on a patron inside the store the previous week. That incident involved one bookstore patron attacking another patron with a heavy book. The bookstore had warned the guard not to use his gun again unless the situation demanded it.

You are an associate with a law firm. John and Sally have come to your firm for representation. A partner talked with John and Sally, and she learned that neither John nor Sally have suffered any emotional distress as a result of the events described above. The partner has asked you to answer the questions below, but she has directed you not to consider any emotional distress claims.

1. Analyze John's potential claims for intentional torts against the guard.
2. Analyze Sally's potential tort claims against the guard.
3. Analyze Sally's potential claims against the bookstore.