

2. Choose a novel, a short story, or a film that you find particularly fascinating. Imagine you are an attorney representing one of the characters in the story, either in a civil or a criminal case, and compose an opening or a closing statement, using Ben Izzy's guidelines.

Stories and Exercises I

Norman Brand and John O. White

The following exercises are intended as practice for the kind of writing assignments you will find in later chapters of this book. In each case, you will be presented with a particular story or situation, followed by the legal rules and principles that apply to this situation. Using IRAC format, write an analysis of one or more of these situations, as your instructor assigns.

Note: The exercises generally proceed from short to long. The first three are "quick writes." You should be able to respond to these in a paragraph or so. The next group should be somewhat longer. The most complete response is demanded from the final exercise, "Chris the Cocktail Waitress." A sample response to the previous exercise, "Abner and Judy," will provide you with a model for responding to this final assignment.

These exercises originally appeared in Norman Brand and John O. White's Legal Writing: The Strategy of Persuasion (1994).

Quick Writes

These first three exercises are short legal problems. Using the facts and law given, write an answer that demonstrates your analysis of the problem and the soundness of your conclusion.

Quick Write 1

A and B robbed a liquor store. A's gun went off accidentally, and the clerk was shot and killed. The robbery was a felony. A state statute holds that when a victim is killed in the commission of a felony, all defendants shall be charged with murder in the first degree.

Discuss the charge of first-degree murder against B.

Quick Write 2

Rodney and Billy were playing war in front of Billy's house. In the course of one battle, Billy threw a rock (hand grenade) at Rodney. Unfortunately, it hit Charles

who was passing by on the sidewalk. Charles sustained a serious eye injury and wants to sue Billy for the injury.

Discuss Charles's action against Billy.

Assume the following to be a valid legal principle:

A *battery* is a harmful or offensive touching of another that is intentional, and without consent or legal privilege. *Transfer of intent* exists when one intends a battery against one person and unintentionally causes another person to be harmfully or offensively touched. In that case, the actor is liable to that other person.

Quick Write 3

Huge Hugo, the neighborhood bully, encounters Ronald in an alley. Without moving a muscle, Hugo tells Ronald he is going to jump on Ronald's head. With that Hugo smiles, but not in a friendly way. Ronald leaves immediately and becomes sick from fear. Later he wants to bring an action for assault against Hugo.

Discuss Ronald's action for assault.

Assume the following to be a valid legal principle:

Assault is an intentional, unprivileged, unconsented act that causes reasonable apprehension of an immediate battery. Words alone do not constitute an assault. A threatening gesture must accompany the words.

Legal Writing Questions

The following [eight] writing exercises present facts, law, and legal issues. Use them to practice writing thoughtful, complete, and clear analytical answers. You may use the rules of law provided, or you may rely on your own knowledge of law.

Writing Exercise 1: Charlie and Jack

Charlie was a local weight lifter and bully who liked to start fights. Although quite strong, he was extremely slow moving, and he limited himself to brawling with people who were considerably smaller than he.

Jack was a small, unathletic man who confined his exercise to daily jogging and attempts to stuff himself with enough food to boost his weight over 115 pounds. Unfortunately, he frequented the same bar as Charlie (a place called the Dew Drop Inn). One day while Jack was drinking a high-calorie banana daiquiri, Charlie lumbered over wearing a malicious grin. "You're next, Jackie-boy," he said. "Next time I see you it's going to be all over."

Jack left immediately and thereafter began carrying a gun every time he left his house. Three nights later, while taking a short-cut through an alley, he saw a huge figure about thirty yards away lumbering slowly toward him. Because the figure was about the same size as Charlie, Jack became frightened, drew his gun, and fired. Then he ran home.

Jack's shot grazed Fred, a construction worker who was cutting through the alley on his way home. He now sues Jack for battery. What result? 14

Assume the following to be valid legal principles: 15

A *battery* is the harmful or offensive touching of another that is intentional, unconsented, and unprivileged. However, a person may touch another in self-defense as long as he or she does not use any more force than is necessary to prevent an assailant from harming him or her. Furthermore, one has a right (privilege) to defend oneself even if one makes a *reasonable* mistake as to the necessity of self-defense.

Writing Exercise 2: Red and Sue

Red, a Los Angeles resident, and his girlfriend, Sue, also a Los Angeles resident, decide to drive to Las Vegas for the weekend in Red's new Cadillac. They stop in Barstow, California, pick up a bottle of Old Tennis Shoe Rye Whiskey, and proceed to drink and drive on their way. As they travel at high speed in their erratic trip across the Nevada desert, Sue, a little drunk, decides her skill at steering the car is better than Red's and playfully grabs the steering wheel. The car swerves sharply, the left front wheel comes off, and the Cadillac crashes into a cactus, injuring both Red and Sue. 16

Discuss the possible law suits resulting from this accident. 17

Assume the following to be valid legal principles: 18

- According to Nevada and California law, suits resulting from this accident may be brought in either state.
- Both California and Nevada hold drinking while driving to be negligent. Negligence implies liability.
- If one does not exercise due care and causes another's injury, that person is deemed negligent and is liable for the other's injury.
- If one does not exercise due care and contributes to one's own injury, that person is deemed contributorily negligent. Contributory negligence is a defense to an action in negligence. Recovery is diminished according to the amount of fault in causing the injury.
- Both states stipulate that a manufacturer is responsible for any damages resulting from defective parts.

Writing Exercise 3: Roman Round

Roman Round, a travelling salesman with districts in the states of Glacier and Forest, married his childhood sweetheart, Susan, in a civil ceremony in Glacier in 1955. In 1962 twin daughters, Annie and Fannie, were born to them. Roman, however, had a girlfriend named Alice who also lived in Glacier. Alice had a son, Homer, by Roman in 1962. Susan died in 1963, at which time Roman moved in with Alice. They lived together as husband and wife, and in 1973 had another child, Rupert. In addition, they adopted a seventeen-year-old girl named Ruby in 1974. In 19

1971 Roman had met and married Nora in Forest. He lived with her when in Forest and with Alice when in Glacier. Roman and Nora had a child, Fred, in 1972.

Roman attended a sales convention in Atlantic City in 1994, at which time, while swimming with Rita, a cocktail waitress, he was devoured by a shark. Rita was not injured. Roman left no will, but did leave an estate of \$100,000.

Discuss the inheritance rights of all the parties.

Assume the rules in this jurisdiction are as follows:

- When there is no will, both the states of Glacier and Forest divide property equally among the decedent's living legal wife and legitimate children.
- Marriage at common law in both states is valid after seven years of cohabitation.
- Legitimate children are children born of any valid marriages.
- An adopted child is also a legitimate child.
- Bigamy, entering into a marriage while already married, is illegal, and all marriages subsequent to the valid one are void.

Writing Exercise 4: George and Mabel

George and Mabel, on a visit to the city of Saint Frank, buy a ticket for a ride on the city-owned streetcar. They then relax and enjoy the ride as C. Jones, the operator, runs the streetcar and points out the sights. Meanwhile, Ms. Fox, out shopping, had parked her Audi on the tracks, assuming them to be abandoned because no sign was posted indicating they were in service. C. Jones, coming around a curve, saw Ms. Fox's automobile and was barely able to bring the streetcar to a jolting halt before it could strike the car. Mabel and George were both thrown from the streetcar and injured. Mr. Smith, a fellow passenger, jumped from the streetcar to aid George and Mabel, and broke his leg.

Discuss the law suits that may result from this accident.

Assume the following to be valid legal principles:

- The owner of a vehicle parked within five feet of streetcar tracks currently in service is liable for all injuries resulting therefrom.
- One is not required to come to the aid of another, but if he or she does, he or she does so at his or her own risk; that is, he or she cannot recover from the person he or she aided for any injuries he or she may sustain.
- The city is responsible for any injuries resulting from careless or hazardous operation of its streetcar line.

Writing Exercise 5: Jones and Green

Jones orally promised to will his home and property to Green if Green took care of Jones's sister, who lived in Sacramento. Green then moved from San Francisco to Sacramento (a distance of eighty miles), where he acted as a domestic servant,

attended to Jones's sister's personal needs, and acted as her nurse until her death five years later. When Green informed Jones of his sister's death, Jones suffered a fatal heart attack, leaving a perfectly valid will that gives all of his property to Thompson.

Green comes to you for legal advice. He tells you that he forsook most of his friends and personal pleasures and gave up other lucrative employment opportunities for this job. He wants to know if he is entitled to the home and property. 27

Assume the rules in this jurisdiction are as follows: 28

- A will may be revoked at any time before the person who made it dies.
- When a person gives up something of value in reliance upon the promise of another, that person can recover the fair value of what was given up.
- The estate of a deceased person is liable for all of the legitimate debts of that deceased person.
- Any contract to make a will must be in writing or it will not be enforced.

Writing Exercise 6: Baker and Abba

Jim Baker, a seventeen-year-old, five-foot-nine-inch, 139-pound boy, was hitchhiking one afternoon in July. Tom Abba, a heavyset, thirty-five-year-old man, stopped to give him a lift. While driving together, Tom learned that Jim was carrying five thousand dollars to make a drug purchase. Tom stopped the car and suggested that Jim get out, so they both could go for a swim. Both men left the car. Tom pulled a knife and said, "Jim, give me the money." After Jim had handed him the money, Tom said, "I guess I can't leave a witness," and proceeded toward Jim. Jim drew a pistol from under his shirt and fatally shot Tom. Jim has been charged with murder. 29

Discuss whether Jim is guilty of murder under these facts. 30

Assume the rules in this jurisdiction are as follows: 31

- If a person is threatened with deadly force, that person has a duty to retreat before employing self-defense.
- There is no duty to retreat where one cannot do so in safety.
- If a person kills another in self-defense, that person is not guilty of murder.

Writing Exercise 7: Mrs. Trueblue

Mrs. A. Trueblue and her six-year-old daughter went to dinner at the Blue Wolf Restaurant. The waiter, a surly fellow, asked Mrs. Trueblue, "Well, whaddaya want?" Taken aback at his insolence, Mrs. Trueblue nevertheless ordered two rare steaks. The order came shortly thereafter, burned to a crisp. When Mrs. Trueblue protested, the waiter shouted, "You old witch, what do you expect when you come to a place like this?" He ranted at Mrs. Trueblue and her daughter for another few minutes and then left. Mrs. Trueblue, angered but not flustered, indignantly started to leave. The manager, thinking she hadn't paid her bill (which she 32

hadn't, because the waiter had taken the dinners back), blocked her way, demanding payment. When she attempted to leave, he grabbed her purse, breaking the strap. Being unwilling to leave her purse, Mrs. Trueblue remained in the restaurant for four hours arguing with the manager. Finally the manager let her go. Mrs. Trueblue's young daughter subsequently became quite ill and was unable to sleep well for several weeks because of the waiter's accusation.

Who is liable to whom, and for what?

Assume the following to be valid legal principles:

- *False imprisonment* is the intentional physical or psychological confinement of the plaintiff by the defendant, without consent and without legal privilege. Psychological confinement exists when the plaintiff is placed under no physical restraint but submits to a threat of force or asserted legal authority.
- A *battery* is a harmful or offensive touching of another that is intentional, and without consent or legal privilege.
- *Intentional infliction of mental distress* requires outrageous conduct on the part of the defendant that is calculated to cause and does cause the plaintiff severe mental or emotional distress.

Writing Exercise 8: Eel O'Brien

Although financially down on his luck, Eel O'Brien remained undaunted in his devotion to *Plastic Man* comic books. Unable to afford the slight coinage necessary for procuring the monthly issues, Eel had taken to perusing them at the racks of some of the local drug and grocery stores. Soon, however, having worn out his welcome at these establishments, he ventured onto new territory, Gargantua's Groceries, a dump if ever there was one, with not a soul in sight. Eel enjoyed as best he could the latest exploits of his hero. He then replaced the comic book in the rack and quickly proceeded to the exit, where he encountered Gargantua himself, who, in height, girth, and musculature, seemed a more or less human equivalent of King Kong. Gargantua's body was pressed against the door, removing the exit from sight.

"Gimme it," Gargantua demanded.

"G-g-give you what?" queried Eel, uneasily.

"Unless you take that comic book from under your coat, you're not walking out of here."

Eel, now nearly hysterical with fright, thought he heard an emphasis on "walking" and assumed it meant that his legs were in danger of being broken. Quickly glancing around the store, he saw a back door and sped to it. Gargantua lumbered after, hurling a gallon jug of cranberry juice that missed Eel but struck a Campbell soup display, a can of which rolled under Eel's feet, nearly causing him to trip as he made his way to the rear of the store and out.

Eel has just stormed into your office, wildly recounting these details and shrieking, "Do something, do something!" What, legally, can you do for him?

Assume the following to be valid legal principles:

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- *Assault* is an intentional, unprivileged, unconsented act that causes reasonable apprehension of an immediate battery. Words alone do not constitute an assault. A threatening gesture must accompany the words.
- *Intentional infliction of mental distress* requires outrageous conduct on the part of the defendant that is calculated to cause and does cause the plaintiff severe mental or emotional distress.

Problem 1: Abner and Judy

Abner and his cousin Judy left the Midwest to take the trip to Metropolis they had planned for so long. Despite their excitement at visiting the big city, they were greatly concerned by the stories of muggings and robberies that were often related to them by friends who had visited there. Consequently, Abner and Judy were more than usually upset when they discovered that their hotel had no record of their reservations and that they had to walk six dark blocks to a neighboring hotel that could accommodate them. After walking only one block, they noticed two men walking behind them and rapidly overtaking them. As Abner looked back nervously, the two men looked away and appeared to have no interest in them. Still, Abner, who was very protective of cousin Judy, became more and more apprehensive.

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As the two men overtook Abner and Judy, Abner stopped and pulled Judy out of the way. At that the two men also stopped and turned to face the couple. One said "Hey Buddy . . .," at which moment Abner, with his souvenir collapsible Metropolitan umbrella, struck the man sharply on the head, knocking him out.

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The other man, Frank, a chef who was carrying his favorite honing knife home to sharpen it properly, pulled it from a bag he was carrying and gracefully thrust it into Abner's right shoulder, seriously wounding him.

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Judy then brandished her own umbrella, slapping it sharply against her hand for emphasis. The man with the knife turned, broke into a creditable sprint, and disappeared around the corner.

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Meanwhile, it began to rain. Concerned about Abner, Judy opened her own umbrella to protect him from the weather until help came. As she opened the umbrella, however, one of the wires supporting the fabric sprang out and struck and injured her right eye.

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After the police arrived, they discovered that the man who had been knocked unconscious was Mr. Naybor, a well-known businessman and owner of a nearby restaurant, who claimed he had only been trying to warn the couple to be careful on such dark streets. The other man, Frank, was his head chef. Abner admitted he had made a mistake.

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Discuss the following issues:

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1. The businessman, Mr. Naybor, wants to sue Abner for battery to recover his medical expenses.
2. Abner wants to sue Frank for battery to recover his medical expenses.

3. Judy, to recover her medical expenses, wants to sue the umbrella manufacturer for manufacturing a defective umbrella.

Assume the following to be valid legal principles:

Battery. A battery is a harmful or offensive touching of another that is intentional, unconsented, and unprivileged. However, a person has a privilege to touch another in self-defense as long as he or she does not use any more force than is necessary to prevent an assailant from harming him or her. Furthermore, one has a right to defend oneself even if one makes a reasonable mistake as to the necessity of self defense.

Product Liability. A manufacturer is absolutely liable for any defects in a product that are caused by the manufacturer and not by abuse of the product.

Sample Answer: Abner and Judy

As a result of a misunderstanding and altercation on a dark street in Metropolis, two actions in battery are in question. A possible action in product liability is also indicated.

NAYBOR V. ABNER (BATTERY). Mr. Naybor, a local businessman, may want to bring an action in battery against Abner, a visitor to the city. Abner, thinking he was about to become the victim of a mugging, struck Mr. Naybor over the head with an umbrella. The question is whether that action constituted a battery.

Battery requires an intentional and harmful or offensive touching. When Abner delivered the blow to Mr. Naybor's head with the umbrella, it was an intentional act that caused harm and was offensive to him. However, a battery must also be unconsented and unprivileged. Although Mr. Naybor did not consent to the blow, Abner may have privilege if he acted in self-defense or even if he made a reasonable mistake as to the necessity of acting in self-defense.

Because Abner was mistaken, the issue is whether the mistake was reasonable. The street was dark, and Abner may have had reason to be nervous about muggers. Naybor himself said he stopped to warn the couple. Still, it is problematic whether Mr. Naybor gave Abner cause to strike him. Mr. Naybor only said "Hey Buddy," a form of address that does not necessarily carry with it a threat, although it isn't particularly cordial. Also, although Naybor and Frank were overtaking Abner and Judy, and they did stop and turn to Abner, Naybor made no other gesture that could be construed as threatening. However, the form of address, the surroundings, and the nature of approach might very well be enough for a reasonable person to think he was about to be mugged.

The next question, however, is whether that reasonable apprehension would be enough to cause a reasonable person to use the amount of force Abner used. Abner may have believed he had to act at that instant or become a victim. However, because he could have spoken to the stranger, and because there was a

high probability of error in his assessment of the situation, Abner probably used more force than he had privilege to use. Therefore, because he did not have privilege to strike Mr. Naybor as he did, he should be liable to him for battery.

ABNER V. FRANK (BATTERY). After Abner had struck Naybor with the umbrella and knocked him out, Frank stabbed Abner with the boning knife he was carrying in a bag. As a result, Abner wishes to bring an action in battery against Frank, the chef.

It is clear that Frank touched Abner intentionally and harmed him. The question is whether he had any privilege to do so. He may have had privilege if he were acting in self-defense, because one may touch another in self-defense if he or she uses no more force than is necessary.

In this case, the question is whether Frank, by stabbing Abner with a knife, used more force than he had privilege to use. On the one hand, Abner only had an umbrella—a souvenir one at that. Still, it proved effective, as it was sufficient to knock out Mr. Naybor. Also, since it was dark there may be some question as to whether Frank knew what kind of weapon Abner used.

But were there any other options for Frank rather than proceeding directly to potentially deadly force? He could have run away, as he did later, but he would have had to abandon his employer, who was unconscious. He did run away later, but by then the situation had changed, and Abner had been wounded. Frank could also have spoken to Abner to try to see what the situation actually was. But there is no indication that he spoke to Abner. He did react instantly, but was the reaction reasonable?

Because there were other options open to Frank, and because there is no indication that it was necessary at that moment for Frank to use potentially deadly force, it appears that he used more force than he had privilege to use. Therefore, he will be liable to Abner for battery.

JUDY V. UMBRELLA MANUFACTURER (PRODUCT LIABILITY). Following the stabbing, Judy slapped her own umbrella against her hand as she brandished it. The chef turned and ran. Then she opened her umbrella only to have a wire spring out and injure her eye. As a result, she wishes to bring action against the manufacturer of the umbrella because a manufacturer is absolutely liable for any defects in a product that are caused by the manufacturer and not by abuse of the product.

The first issue is whether Judy abused the umbrella. It is true that she slapped it against her hand for emphasis. We do not know the amount of force she used. It may be argued that because an umbrella is not made to be slapped against the hand or used as a weapon, Judy abused it. However, it is also true that an umbrella should be made to withstand normal wear and tear. A manufacturer should foresee that an umbrella may be tossed into a closet or the trunk of a car, or that it may be tapped on the ground to shake off water. It is hard to tell how hard Judy slapped the umbrella against her hand, but that act in and of itself does not necessarily indicate abuse.

The law requires not only that there be no abuse of the product, but that the defect be caused by the manufacturer. Here is a problem. Not much is known about the umbrella. It is not clear if this too is a souvenir—as is Abner's umbrella. Judy's umbrella's age, condition, or prior use is unknown. There is no indication of a defect specifically caused by the manufacturer.

Because no abuse of the product can be substantiated, and because no specific defect caused by the manufacturer can be ascertained, there can be no finding of liability in this issue without more facts. Based on the facts presented, the manufacturer cannot be found liable.

Problem 2: Chris the Cocktail Waitress

Chris Connors, a cocktail waitress at Earl's Lounge and Restaurant, was walking through the crowded lounge intending to serve a round of drinks when she was touched indelicately by Wilson Smith, one of the customers. She was so startled by the touch that she dropped her tray on the table of a party of four, slightly injuring one member of the party, a law student named Marvin Bailey, and spilling liquor over all of them. Marvin suffered a cut nose.

Marvin, very upset at being injured and also at being forced to hurry home to change his clothes before his evening torts class, went immediately to his car and backed directly into a car driven by Dean Gruff. Both automobiles were damaged.

Meanwhile, Chris retrieved the dropped tray, cleaned up around the table, brought new drinks, and, on her way back to the bar, took the tray and delivered a convincing blow to the top of Wilson Smith's head. Smith was surprised and offended, because, given the nature of Chris's job and her brief uniform, he assumed she could handle the overt behavior he considered to be appropriate to bar atmosphere.

Discuss the following issues:

1. Chris Connors wants to sue Wilson Smith for battery.
2. Marvin Bailey wants to sue Wilson Smith for Bailey's injury, his cleaning bill, and for repair to his own and Dean Gruff's car, all as a result of battery.
3. Wilson Smith wants to sue Chris Connors for battery.

Assume the following to be valid legal principles:

A battery is a harmful or offensive touching of another that is intentional, unconsented, and unprivileged. However, one may have a privilege to touch another in self-defense as long as he or she does not use any more force than is necessary to prevent an assailant from harming him or her. Furthermore, one has a right to defend oneself, even if one makes a reasonable mistake as to the necessity of self defense.

(Further clarification of intent: If a defendant intends to touch one person, and in the process causes another to be touched, the wrongful intent is transferred to the unintended victim. The defendant will then be liable for resulting damages as long as those results should be foreseeable and as long as there is no intervening cause for those results.)