

This is a partial example of student feedback sent as part of one of our programs. The writing has been edited down in the interest of length.

Good job working through this hypo. I know the first hypo that you work on is never an easy task!

*Let's start with **the organization of the question**. See my notes below as to how I would recommend you try to organize this type of torts question.*

*Secondly, you want to focus on **arguing the facts**. There were facts in this question that you didn't discuss (that were in the fact pattern). There are seldom immaterial facts included in a short fact pattern such as the one assigned. So make sure you are discussing all of the facts!*

***Don't forget the importance of analysis**. As you will remember from our lecture in class, you want raise counter-arguments when appropriate as part of your analysis. Counter-arguments are present when there is ambiguity (of the facts or the law). You don't want to miss analysis points because they are the key to a good exam score!*

***Remember to use headers to break up any writing assignment** and make it easier for the grader to read. Since this question is in two parts, you want a header for Gayle and a header for Frances. (See below.)*

***When you organize your answer, you want to do so based on the tort itself**. For a negligence question, your organization is usually driven by the law itself (the required elements of the tort of negligence). Here I have included my suggested outline for this question.*

Paula v. Gayle

Negligence

- (1) Duty**
- (2) Breach**
- (3) Causation (Actual and Proximate)**
- (4) Damages**
- (5) Defenses**

Paula v. Frances

Negligence

- (1) Duty**
- (2) Breach**
- (3) Causation (Actual and Proximate)**
- (4) Damages**
- (5) Defenses**

Below I have included some more specific comments based on your writing. I think it would be a good exercise to re-write this question and send it back to me. Remember, taking law school exams is a learned skill, so we all need to practice!

The issue is whether Paula would be able to bring a claim against Gayle as well as Frances. *Good job including an issue statement. It is important to keep the IRAC in mind throughout the question.* Negligence is any conduct that creates an unreasonable risk of harm to others. To have a valid claim for negligence, a plaintiff must establish the elements of the prima facie case: the defendant owed the plaintiff a legal duty; D, acting negligently, breached that duty; P suffered actual damages; D's negligence was an actual cause of the damage; and D's negligence was a proximate cause of the damage. *Good job laying out the rule statement here.* In determining the standard of proper behavior, all conduct is compared to the standard of care that would be exercised by a reasonable and prudent person under the same or similar circumstances to avoid or minimize risks of harm to others. Assessing both Gayle's conduct and Frances' behavior through these five elements, it will be evident as to what theory Paula might be able to recover under. *I would not recommend that you discuss Gayle and Frances together. Just take Gayle and present the rules and go through the elements of the tort one-by-one. You can reference the rules above as you talk about Frances, but then you would want to take each issue separately for Frances. See my comments above re organization. If you used my outline, how would the question look different?*

It is fairly undisputed that Gayle's conduct constitutes negligence. *Unless your professor likes you to start with a conclusion, I don't recommend it. Remember, IRAC is different than CRAC (conclusion, rule, analysis, conclusion). Some professors prefer you use CRAC, but most want you to use IRAC.* As a driver, she is required to obey the law pertaining to road and parking etiquette. *Remember, we are talking about legal duties here. What is her standard of care? Is it to act as a reasonably prudent driver? Remember to lead with the rule then argue what constitutes a reasonably prudent driver. You raise the issue here of breaking the law while driving – that could be negligence per se if you wanted to bring that up (and had the facts to support it).* However, in this instance she parked several feet away from the curb before entering Frances's house. Then, she recklessly driving without looking she hit Paula, as the officer was approaching the vehicle. *Here, you are restating facts before you argue them. To streamline, make sure you argue facts (which you do in the following sentences). You typically don't get points for restating facts.* Here, Gayle owed Paula a legal duty to operate her vehicle in a controlled manner that required her to not only park appropriately, but to drive carefully and with her eyes on the road and what is before her. Instead, rushing to move her car that was illegally parked, Gayle breached that duty by operating her vehicle in a careless manner. *Unless your professor wants you to run these issues together, you typically want to present the standard of care and then discuss breach separately. At least, use separate paragraphs if you are not going to use headers. (But as we discussed in class, headers are almost always a good idea).* Due to Gayle's negligent conduct, Paula received injuries that would amount to allowable damages (medical bills, lost wages, etc.). *Unless your professor has asked you to discuss damages right after breach, you want to make sure you discuss damages after causation.*

[Edited for length]

Depending on the precedent of this jurisdiction, Paula may have a strong claim against Gayle for negligence. She does not have a very strong suit against Frances. Furthermore, it will be necessary to examine the jurisdiction's adherence to the Firefighter's rule to see whether Paula's claim may be barred due to her duties as a police officer. *Good conclusion. Nice job remembering this is an important part of the IRAC and that you typically want to do an overall conclusion for the entire question.*

Please let me know if you have any questions on my feedback.