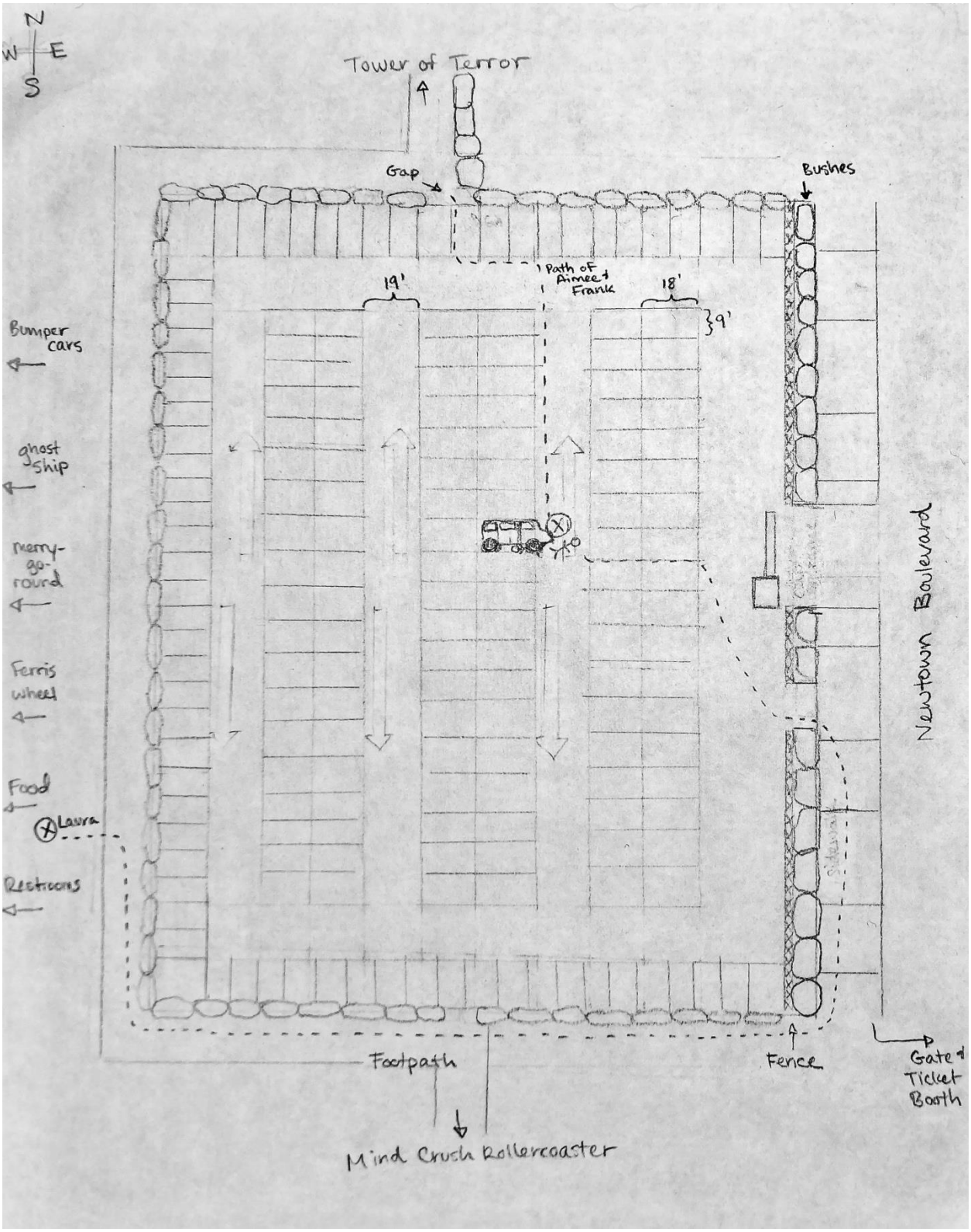
Mind Crush of Terror



Aimee (A/N/F Parent) & Frank's Estate (Lauren) v. AFAP

- **Duty**

Status-approach jurisdiction:

Some courts require evidence of "prior similar incidents" before businesses have a duty to protect. However, AFAP is a landowner and has a nonfeasance duty to protect. AFAP owes a higher duty – a duty to inspect. A landowner must exercise reasonable care to protect an invitee from dangers of which the landowner knew or should have known.

Aimee and Frank ("A&F") were invitees because they bought tickets. AFAP owned and operated the parking lot.

Not a status-approach jurisdiction:

AFAP has a duty of ordinary care and a duty to rescue because it created the peril. There could also be a duty to control based on negligent entrustment because AFAP allowed 11-year-olds in the park without adult guardians.

- **Standard of Care ("SOC")**

AFAP must either remedy dangers by maintaining required safety features or warn the invitee of the existence of known perils. When a landowner can remedy a danger with very little effort or cost, warnings are no longer sufficient.

Ordinance 125 – 90º parking spots require an aisle width of 22'.

Ordinance 126 – Parking stalls must have wheelstops when the parking lot has more than 35 stalls.

- **Breach of SOC ("Breach")**

AFAP breached the SOC when it required narrower aisles during construction, continued to keep the narrow aisles, only had fencing on one side of the parking lot, did not replace the

warning sign, and did not put in wheelstops. AFAP would have prevented A&F's injuries by using cheap fencing or wheelstops made from almost any material.

Negligence *per se* ("NPS")

Negligence due to the violation of laws meant to protect the public. AFAP is in violation of ordinance 125 & 126's requirements for parking lots (assuming more than 35 stalls) and AFAP never fixed the lot's violations. Newstate developed the ordinances to prevent the injuries that A&F experienced and A&F are in the class of protected plaintiffs. Wanting 9% more parking spaces is not an excuse.

- **Cause-in-fact ("CIF")**

But-for AFAP breeching the SOC, Damian would not have run over A&F and A&F would not have suffered injuries. Only needs to be *a* CIF.

Frank:

It is harder to prove that AFAP's actions caused the aortic dissection. Expert testimony from a pathologist is necessary to prove the accident caused a weakened aorta. This argument is stronger because previous imagining did not identify it.

- **Proximate Cause ("PC")**

Given the breach, the injuries were foreseeable, even if the severity (eggshell) or the mechanism leading to those injuries was not (rat flambé). It's foreseeable that someone would run over children when AFAP did not construct its parking lot to code.

Frank's intervening cause:

A car accident causing an aortic dissection is not so outside the foreseeable injuries to be a supervening intervening cause, and AFAP is liable for the original injury and may also be for the future injuries.

- **Damages:** to make someone whole.

Damages are likely lump-sum payments that the court will reduce to present value. Damages can include interest. There are possible caps on total damages or categories of damages. A&F had minimal personal property loss with little to no market value. Plaintiffs participated in mitigation of damages by receiving proper medical care. The court could award punitive damages if it finds AFAP was reckless in its statute violations or land maintenance. Collateral source rule allows for damages equal to the billed amount, not the amount paid. A&F's parents should ask for the full amount of $250,072.76 and $266,020.98 respectively. No need to reduce damages if attorney waited until after trial to negotiate or parents negotiated independently. Parents might need to pay back health insurer (subrogation).

Aimee's Damages:

	Past	**Future**
Pecuniary	○ Medical expenses Transport, hospital, testing, imaging, doctors, medication, follow-up, etc. $266,020.98 ○ Incidentals	○ All future medical expenses PT, OT, counseling, plastic surgery for scars, missing spleen care, IVF ○ Diminished earning capacity ○ Incidentals – special shoes
Non-pecuniary	○ Pain and suffering (& embarrassment) pre-trial: accident and medical procedures	○ Loss of enjoyment of life Disfigurement, athletic failure, problems conceiving and early menopause ○ Pain and suffering post-trial: depression, anxiety ○ Emotional distress

Frank's Damages:

	Past	**Future**
Pecuniary	○ Medical expenses Transport, hospital, testing, imaging, doctors, medication, follow-up, etc. $250, 072.76 ○ Incidentals	
Non-pecuniary	○ Pain and suffering (& embarrassment) From 09/01/2020 until death in November (while conscious), distress from blindness, sadness about future	

This is a survival action brought on behalf of Frank by his parents to recover for his injuries before death. See below for wrongful death claim.

Defenses

No Breach:

AFAP claims it did not breach the SOC because it had no reasonable knowledge of the parking lot danger. However, AFAP had constructive notice because the vegetation did not grow in the "shortcut" path due to so many people crossing through the opening. Also, AFAP had actual knowledge of the danger because it had previously posted a sign to address the problem.

No PC for Frank's Death:

AFAP will claim that Damian's intervening cause is a supervening intervening cause because aortic dissection is outside the foreseeable consequences of breaching the landowner's SOC. However, it is foreseeable that a child would die from breaching the parking lot ordinances, and eggshell plaintiff and rat flambé are not defenses.

Comparative fault:

Newstate has a pure comparative fault statute. No amount of plaintiff's fault will remove liability for defendants.

AFAP claims nonparty liability. AFAP claims it was S&Q's negligence that caused the tort, despite S&Q's reluctance to narrow the aisles. However, AFAP required S&Q to build the parking lot negligently. Court will determine liability percentages to all parties. Plaintiffs may not recovery from S&Q because of time bar, but percentage of fault might still be allocated to S&Q.

AFAP claims it was Damian's negligence that caused the tort. The court will allocate appropriate percent of liability to Damian if the court finds they were negligent. Damian claims if the aisles were the correct size and wheelstops in place, this would not have happened.

Because parties cannot be jointly liable, separate suits may mean that plaintiffs do not recover the total amount.

Newstate might integrate assumption of risk into comparative fault. The court can allocate some fault to A&F if it finds A&F assumed risk by waiver (express) or by fault of crossing the parking lot when they should have used the path (implied). However, A&F did not have knowledge of the particular risk of a car pulling forward out of a spot but did know about general dangers of parking lots. The court may find no express or implied assumption of risk. No amount of A&F's fault (<100%) will bar recovery.

AFAP claims a congenital defect caused Frank's aortic dissection. The court may reduce liability by the percentage of likelihood that it was a congenital defect based on expert witness.

Invitee v. trespasser:

AFAP only has a duty to warn of artificial conditions if A&F were trespassing. The court might find trespass because A&F entered the lot outside the prescribed method. However, patrons could freely access the parking lot and A&F were patrons. Also, the court can consider A&F as known trespassers (see constructive notice above). Landowners must warn known trespassers of dangers involving serious injury or death when they approach a human-made conditions. Further, the attractive nuisance doctrine gives special treatment to children trespassers and the landowner must exercise reasonable care.

Waiver of Liability:

A&F typically buy their own tickets. They are not old enough to enter a contract or consent to the removal of AFAP's liability. Lauren was in the park that day, she might have bought the tickets. However, parents cannot sign away children's rights to sue either.

The ticket simply read, "[t]icketholder assumes all risks of park activities, including injuries or death." Although the language was clear, no one signed the tickets. Also, there was no informed consent because the "waiver" did not detail the included activities and associated risks. It is unlikely the "waiver" would have included the parking lot as an assumed park risk.

Alternatively, AFAP was reckless, which also negates the "waiver."

Statute of limitations ("SOL")

Plaintiff's must bring action within 4 years if the action is founded on negligence, as it is here. The court may bar AFAP's original negligence, but AFAP's continued negligence is actionable.

Aimee (A/N/F Parent) & Frank's Estate (Lauren) v. Damian

- **Duty**

Be reasonable when active. Damian was active while driving.

- **SOC**

Damian's duty of care was to act as a reasonably prudent person under the circumstances.

The circumstances were driving a death machine (Escalade).

- **Breach**

It's unclear if Damian breeched the SOC. Maybe Damian created an unreasonable risk of bodily injury & death to foreseeable victims.

Plaintiff's will argue it was unreasonable for Damian to drive right after putting their phone down, not checking the front by getting out or using a camera, or alternatively parking so they could back up to exit. Also, A&F were tall enough to ride the rides for two years, they might have been tall enough for Damian to see them over the Escalade. The average height of 11-year-olds is 56" and the front of an Escalade is about 56". The children would have been visible if they were even a couple of inches away front the front of the car and still in its shadow.

- **CIF**

The mere fact that the accident happened does not show CIF. However, Damian caused the accident, so, CIF is likely.

But-for Damian breeching the SOC, A&F would not have suffered injuries.

Frank: see above under AFAP CIF.

- **PC**

  Given the breach, the injuries were foreseeable, even if the severity (eggshell) or the mechanism leading to those injuries was not (rat flambé). It is foreseeable that the unsafe operation of a car would injure or kill.

  Frank's intervening cause:

  An aortic dissection is not so outside the foreseeable injuries to be a supervening intervening cause, and Damian is liable for the original injury and may also be for the future injuries.

- **Damages**

  See above under AFAP damages.

Defenses

No Breach:

Damian will claim there was no breach in the SOC. They will claim driving an Escalade is not inherently negligent. They might claim they acted as reasonably as any other Escalade driver would in this circumstance.

Comparative fault:

See above under AFAP for comparative fault analysis.

SOL:

Plaintiff's must bring action within 4 years if the action is founded on negligence, as it is here.

Aimee (A/N/F Parent) & Frank's Estate (Lauren) v. S&Q

- **Duty**

The duty of a professional architect not to commit malpractice, or when active designing a parking lot, be reasonable.

- **SOC**

Custom establishes the standard of care. S&Q must act with the minimal competence exercised by other architects in good standing. An architect expert witness is necessary to determine SOC.

See ordinance 125 and 126 above.

- **Breach**

S&Q created an unreasonable risk of bodily injury & death to foreseeable victims by not following custom. It is easier to prove NPS in this case than breach of custom.

NPS

Negligence due to the violation of laws meant to protect the public.

S&Q violated both ordinances. See explanation above under AFAP.

- **CIF**

But-for S&Q breeching the SOC required by law, Damian would not have run over A&F and A&F would not have suffered injury.

Frank: See above under AFAP.

- **PC**

Given the breach, the injuries were foreseeable, even if the severity (eggshell) or the mechanism leading to those injuries was not (rat flambe).

Frank: See above under AFAP.

- **Damages**

See damages above under AFAP.

Defenses

Comparative fault:

See above under AFAP.

No PC for Frank's Death:

See above under AFAP.

*SOL:

Plaintiff's must bring action within 4 years if founded on the design, planning, or construction of an improvement to real property, with the time running from the date of the issuance of a certificate of occupancy. In any event, Plaintiff's must commence action within 10 years after the date of the issuance of a certificate of occupancy. It has been over twenty years since the certificate of occupancy was issued (and ten since S&Q opened their law practice). **The court will bar this action!**

Lauren v. AFAP, Damian, & S&Q (separately and for not more than 100% of damages)

Wrongful death

Wrongful death action to recover for her loss as a parent stemming from Frank's tortious death.

- **Duty, SOC, Breach, CIF, PC** – same as above.
- **Damages**

Funeral expenses and "mental pain and suffering from the date of the injury." 3 § 3(d)–(e).

Defenses

SOL:

The court will dismiss the wrongful death suit if Lauren brings it after 2 years.

Comparative fault:

Lauren's own fault in negligently allowing her children to run amuck in the park or Frank's fault in crossing through the lot can affect Lauren's recovery.

Emotional distress

- **Duty**

Duty is limited by type of harm.

Direct action:

Lauren suffered no physical harm, no defendant "touched" Lauren during tortious action, and she was not at risk of impact. She might have suffered physical manifestation of harm: sleep issues, migraines, diarrhea, etc.

Bystander action:

A bystander can recover when she had a close relationship with the injured person and is in the danger zone. A parent/child relationship is a close relationship.

- **SOC, Breach** – same as above.
- **CIF**

The defendants' conduct caused Lauren to "witness" the tortious death of her child and caused Lauren's emotional distress.

- **PC**

Given the breach, Lauren's emotional distress was foreseeable.

- **Damages**

Non-pecuniary damages of pain and suffering.

Defense

*No Duty:

Defendants claim Lauren was not in the zone of danger because she was more than 500 yards away and outside the line of sight. Also, her only sensory observation was hearing the other child, not her child, scream.

Word Count: 2,483

Frank and Aimee v. Damian

Duty:

Damian was active when operating their car and pulling out of the parking space, therefore they owed a duty to Frank and Aimee. *Heaven v. Pender*.

Standard of Care ("S/C"):

The S/C is to act as a reasonably prudent person under the circumstances. The circumstances include driving a large SUV in an amusement park's parking lot.

Breach of the S/C ("Breach"):

Damian breached the S/C because they acted unreasonably when pulling out of their parking space. Damian was tired and had been looking at their phone before they quickly pulled the Escalade forward without adequately checking their surroundings, given the size of their SUV.

As a frequent patron of All Fun Amusement Park ("AFAP"), Damian should have known that people often cut through the parking lot.

Frank and Aimee were singing and skipping through the parking lot. They had been tall enough to ride the Mind Crusher and Tower of Terror for two years. A reasonably prudent driver (in a reasonable car) would have heard and seen the children before pulling forward.

Cause in Fact:

But for Damian pulling the Escalade forward without checking their surroundings as a reasonably prudent person would, Frank and Aimee would not have been injured.

Proximate Cause:

Significant injuries, including death, that result from an Escalade hitting a child are foreseeable. Under the eggshell plaintiff rule, the extent of the damage is irrelevant.

Damian may argue that Frank's aortic dissection is a superseding, intervening cause. However, while the cause is unclear, the pathologist surmised that the trauma from the crash likely weakened Frank's aorta; there is at most a ten percent chance the aortic dissection was due to a congenital defect. Therefore, this is not too far outside the realm of foreseeable injuries, and Damian can be liable for Frank's death if they are liable for the crash.

Damages:

We would investigate both lists of medical expenses Frank and Aimee's parents compiled to ensure they are complete and only include those medical expenses due to the crash. For example, Aimee may also have separate imaging bills like Frank, and Frank likely has paramedic bills, too. The lists do not appear to include extraneous expenses.

The collateral source rule allows claimants to recover the billed amount instead of only the paid amount. Frank's parents' health insurance is a collateral source. That they paid $2,250 and their insurer paid $55,016.00 is irrelevant because Damian should not benefit from their foresight. However, Frank's parents should be aware that their health insurer may seek subrogation, in accordance with Newstate's laws, to recoup the amount it paid from their awarded damages. These considerations apply to any payments Aimee's mom's insurance made, too.

If it was negotiated for, Newstate may not allow Frank's parents to recover the written-off amount ($192,806.76) to avoid double compensation.

Frank and Aimee may recover for property damage to their clothes from the crash.

If Newstate caps damages, Frank and Aimee should strategically frame some of their damages, such as under "impairment," to maximize their recovery.

Frank: Under Statutes 3 and 4, Frank's estate can recover damages Frank was entitled to had he lived (survival action), and his family can recover loss of support and services and mental pain and suffering (wrongful death).

Frank's Damages	Past	Future
Special	**Medical:** • Hospital, rehabilitation, imaging, PT, neurology, and other medical bills: $250,072.76 • Items potentially missing: o Paramedics/ambulance o Anesthesia o Optometrist **Incidentals:** • Any travel expenses to hospital • Any accommodations made to Frank's home • Funeral/burial expenses	**Wages:** • Loss of future earnings/support (This would be difficult to determine due to Frank's age) (Statute 3(3)(a))

General	**Pain and Suffering** • Severe physical pain of injuries • Mental/emotional distress (despondency) • Frank's parents' mental/emotional distress from date of injury (Statute 3(3)(d)) **Loss of Enjoyment** • Inability to enjoy previous activities (visiting amusement park, playing with Aimee, enjoyment of eyesight) **Impairment** • Loss of eyesight	**Pain and Suffering** • Frank's parents' mental/emotional distress • Frank's parents' loss of society

Depending on Newstate's laws, Frank may not be able to recover pain and suffering or loss of enjoyment damages for the week he was unconscious.

Frank's mom, Lauren, likely will be unsuccessful in recovering bystander emotional distress damages. She was not in the zone of danger because she was 500 yards away. Lauren did not witness the accident, she only heard Aimee's—not her child's—screams, and she did not see Frank until after the paramedics arrived, at least four minutes after the crash.

Aimee:

Aimee's Damages	Past	Future
Special	**Medical:** • Paramedic, hospital, emergency, OBGYN, and other bills: $266,020.98 • Any missing items: diagnostic, imaging, medical equipment, ambulance **Incidentals:** • Travel to medical providers • Any modifications to home	**Medical:** • We would need an expert to create a life care plan detailing all future medical expenses, including complications from limp, loss of spleen and ovary **Wages:** • Diminished earning capacity due to limp or ongoing mental distress
General	**Pain & Suffering:** • Physical pain • Mental/emotional distress (mourning Frank; anxiety) • Embarrassment from scarred face and limp **Loss of Enjoyment:** • Inability to enjoy previous activities (playing with Frank, visiting AFAP)	**Pain & Suffering:** • Continued physical pain from injuries • Mental/emotional distress • Embarrassment from injuries **Loss of Enjoyment:** • Inability to enjoy activities • Potential inability to have children

Defenses:

Statute of Limitations ("SOL"): Newstate's SOL for an action sounding in negligence is four years (Statute 6(2)(a)) and two years for a wrongful death action (Statute 6(3)(c)). So long as Aimee and Frank bring their actions by September 1, 2022, there should be no SOL issues.

Comparative Fault: In Newstate, comparative fault diminishes proportionately the damages claimant can recover (Statute 1(2)). Damian would argue that Frank and Aimee were at fault because they were walking along the cars in the parking lot.

The court will evaluate Frank and Aimee's potential negligence based on the standard of a reasonable child of similar age, experience, and intelligence under similar circumstances. They were familiar with AFAP, including the parking lot, and were old and smart enough to purchase tickets and navigate the park on their own. Since they knew to watch for backup lights, perhaps Frank and Aimee should have known that cars may pull forward, too.

Implied Assumption of Risk: Walking through a parking lot is not an unreasonable activity that constitutes assumption of risk. If the court finds Frank and Aimee acted unreasonably when doing so, most likely their damages will be reduced accordingly under comparative fault.

Apportionment of Damages: Since Newstate does not follow the doctrine of joint and several liability (Statute 1(3)), Damian will likely try to apportion as large a percentage of the damages as possible to AFAP. This would be a prudent strategy for Aimee and Frank, too, as it is likely that AFAP's insurance has a higher limit of liability than Damian's.

Frank and Aimee v. AFAP

Duty:

AFAP was active in operating the amusement park, including the parking lot, and, thus, had a duty to Aimee and Frank.

Because of the business-customer relationship (Aimee and Frank had purchased tickets), AFAP may also have a duty to protect. We would need to investigate to determine if Newstate requires a showing of prior, similar incidents to establish this duty, and if so, whether such incidents had previously occurred.

AFAP also has a duty as a landowner of the amusement park and parking lot. Aimee and Frank are invitees because they paid money to enter the park.

S/C:

Because it was active, AFAP's S/C was to act reasonably under the circumstances.

As a landowner, AFAP's S/C to invitees, regarding activities, such as patrons driving in the parking lot, is that of a reasonably prudent person. Regarding conditions, like the lack of wheelstops, AFAP has a duty to inspect and remedy or warn invitees of dangers that it knew or should have known about.

Breach:

AFAP did not act reasonably under the circumstances because it constructed a parking lot in the middle of its large amusement park. It failed to secure the perimeter of the parking lot with a fence, instead opting for penetrable hedges.

This failure also constitutes a breach of AFAP's landowner duty to remedy the dangers on its land. AFAP should have repaired the gap in the hedges or constructed a fence on the three remaining sides of the parking lot. The burden of such construction would be low compared to the high risk of pedestrian-car crashes.

It also failed to sufficiently warn invitees of the danger of walking through the parking lot. It knew patrons did this because it allowed patrons to access their cars as needed. Also, not only would the gap in the hedges have been obvious to a prudent landowner, but AFAP demonstrated actual knowledge of it by posting a sign discouraging use of the shortcut.

This sign may be enough to meet AFAP's duty to warn. However, since we do not know the sign's placement or height, it may not have provided adequate warning to children like Aimee and Frank.

Negligence per se: As the owner and operator of a parking lot, AFAP had a statutory duty under Newtown ordinances 125 and 126.

Ordinance 125(B) requires that off-street parking lots with spaces at a 90° angle have aisles of at least 22 feet wide. AFAP's parking lot aisles are 19 feet wide. Although the ordinance does not state a purpose, presumably these requirements are for the safe operation of parking lots and the prevention of car crashes with other vehicles or pedestrians. As pedestrians in a parking lot, Frank and Aimee are likely within the class of persons the ordinance seeks to protect.

Ordinance 126 requires wheelstops along the perimeter of all parking lots and in each parking space for lots that have more than 35 stalls. Ordinance 126(B) states wheelstops "shall be constructed of concrete,…curbing, asphalt, timber, or other durable material not less than six

inches in height, or an approved functional equivalent." A functional equivalent includes "raised sidewalks or curbs…or similar" (Ordinance 126(B)(3)).

It is unclear if the hedges surrounding AFAP's parking lot are acceptable wheelstops. Although the hedges are probably more than six inches tall, they are not as durable as concrete or timber. The fence on the eastern side is likely sufficient, but it does not surround the entire parking lot. We must investigate to determine if there are more than 35 stalls in AFAP's parking lot. If so, AFAP is violating Ordinance 126(A) because there are no wheelstops in its parking spaces.

Like Ordinance 125, a likely purpose of the wheelstop requirement is to protect against car crashes in parking lots. However, AFAP may argue that Aimee and Frank are not within the class of protected persons under Ordinance 126 because sections A and B(1) state the purpose as to "protect landscaping from vehicle encroachment" and "safeguard against damage to adjoining vehicles, machinery, or abutting property."

Cause in Fact:

But for AFAP's unreasonable construction and maintenance of its parking lot, with its too-small aisles and lack of wheelstops, Damian would not have felt that pulling forward out of the parking space was the better tact, nor would they have been able to pull through the parking spaces to do so.

At minimum, AFAP's breach was a cause in fact under the lesser substantial factor test. That is, AFAP's failure to remedy or adequately warn of the parking lot dangers materially contributed to the crash that injured Aimee and Frank.

Proximate Cause:

Pedestrian injuries from a car crash in a parking lot are foreseeable. However, AFAP will likely argue that Damian was a supervening cause that breaks the chain of causation, it is also foreseeable that a person would act as Damian did and pull through the parking spaces due to the lack of wheelstops and the narrow aisles.

Damages:

See above.

Although AFAP did not appear to act with malice, the court may consider punitive damages to punish and make an example of AFAP.

Defenses:

SOL: As noted above, the SOLs for negligence and wrongful death actions are four and two years, respectively. Since the accident took place just over one year ago, this should not pose a problem.

However, an action based on the design, planning, or construction of an improvement to real property must be brought within four years, and in no event later than ten years after the grant of the certificate of occupancy (Statute 6(2)(b)). Although the exact date AFAP obtained the certificate is unclear, it appears this occurred at least ten years ago since S&Q's contract with AFAP ended that same day, and we know S&Q were sought-after architects for ten years following the success of AFAP who also had a law practice for ten years.

Aimee and Frank should be careful to frame their actions as sounding in negligence rather than the design of the parking lot, so their claims are not prevented by this statute of repose.

Comparative Fault/Implied Assumption of Risk: As discussed above, AFAP will try to reduce Aimee and Frank's damages proportionately by proving they were at fault for walking through the parking lot.

Express Assumption of Risk: AFAP will argue that Aimee and Frank expressly assumed the risk because of the release included on the back of their tickets. However, depending on Newstate's willingness to enforce such waivers, this defense will probably fail.

When evaluating the validity of a waiver, courts consider the language of the contract, whether it was fairly entered into, and public policy. AFAP's release is on the back of its tickets: "Ticketholder assumes all risks of park activities, including injuries or death." This language is vague in part because it is unclear if the parking lot constitutes a "park activity." Aimee and Frank should argue that they did not fairly agree to the release because they likely did not know about it when purchasing the tickets, nor could they have made an informed decision about assuming the risk because of their age and desire to enjoy the amusement park.

Nonparty at Fault: AFAP may argue that S&Q is a nonparty at fault as the architecture firm that constructed the parking lot (Statute 1(3)(a)-(b)). Although S&Q should not have agreed to violate Ordinance 125, it did so at the direction of AFAP. Considering the attenuated chain of events, it is unlikely that AFAP will be successful in proving S&Q were at fault for more than a small percentage of Aimee and Frank's damages.

Apportionment of Fault: AFAP will also try to mitigate the percentage of damages it is responsible for by arguing that most of the fault lies with Damian.

Conclusion:

Aimee and Frank likely can prove their prima facie cases by a preponderance of the evidence. Thus, they will be successful in recovering damages for their injuries and death. The amount recovered will depend on the apportionment of damages between Damian and AFAP, their respective insurance limits, and a determination of any comparative fault.

Word count: 2,465