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Paul can raise the following claims against Dan.

### **Defamation**

Defamation is a defamatory statement made by a person, of or concerning another, that is published to a third party. Defamatory statement refers to statement that impairs one's reputation or character. California recognizes social reputation as well as well as other interests such as proprietary, penal, or pecuniary interest.

Here, D made a statement regarding Paul. It was a defamatory statement because it accused P of "coping footnotes from another's paper." It also called P a "two-bit actor." Considering that P was featured in two recent Hollywood blockbusters, it would definitely hurt P's social reputation because he was an aspiring actor and possibly recognizable by the people on campus and possibly the public. It concerned P's acts because D specifically called out P in making copying another student's work. It was published to a third party because it was announced in front of the class. D told J and P's class in the class.

Thus, D's announcement in front fo the class meets the prima facie case of defamation.

Next to figure out the damages and whether P has any defenses, we have to analyze the type of person D is.

### **Public figure**

Public figures are held to a higher standard of defamation. IT requires a showing of actual malice to by the person who made the defamatory statemetn. public figures are public officials, and those who are recognizable in the public.

Here, D will argue that P was a public figure because P was an actor who was featured in memorable roles in Hollywood blockbusters. He may be seen otu in the public and be recognized as the actor who played the role. He could also be seen as an up and coming aspiring actor.

However, P will counter that he is not a publci figure because he only had a small role in blockbusters. He was probably not recognizable based on the small roles. Furhtermore, he was

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only a law student now and would not be a public figure.

The court is likely to rule that P was not a public figure because he doesn't amount to the level of a public official.

IN teh unliekyl case where he is ruled a public figure, P would have to prove actual malice--that D made the statement even after knowing that it was false.

However, this is unlikely because D had "inadvertently shown J his own paper" and did not actually know that P had copied from J's papers. (see below)

Thus, public figure standard will not apply.

### **public concern**

For public concern, negligence standards apply.

Here, if this were a major public law school that can have dramatic publicity effects, it may be a public concern. However, facts do not state that. It seems more like a simple plagiarizing event in a law school class.

Thus, public concern will not apply.

### **private figure**

For matters regarding private figures, only the prima facie case is needed to be proven.

Here, as shown above, the prima facie case was met.

Thus, P will be able to sue under private figure standard for defamation.

### **special damages**

For defamation, if the defamatory statement were either libel/slander per se, then damage is presumed and no need to prove special damages.

Here, the statement was slander, but does not fit the four enumerated per se slander (disease, business, etc).

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However, P may argue that it did fall under the per se category because as an aspiring lawyer, and possibly an actor, he may be hurt by false accusations of cheating in his future legal career or acting career, that may require honesty.

Thus, the court is likely to rule that the per se slander damages applies and that damage is presumed.

In conclusion, P will prevail on his defamation claim against D.

### **Assault**

Assault is an intentional act that puts someone in imminent apprehension of physical contact or offensive contact.

Here, there was an intentional act by P when he verbally stated out of his own volition that he "hoped no other student copied."

D had intended to put P in imminent apprehension to embarrass and at the same time publicly shame P in front of the public.

P was offensive contact because he had suffered severe panic attack as a result of deep humiliation.

There were no defenses because P did not consent to public humiliation.

Thus, P can sue D for assault and seek damages.

### **Tort Damages**

#### **Legal damages**

Tort damages seeks to put the plaintiff back to the plaintiff where they would be had the tort not occurred. It has to be foreseeable at the time of the tort, reasonably certain, has to be caused, and P has a duty to mitigate.

#### Egg shell plaintiff

Even if the plaintiff is very fragile, or does not have strong mental capacity as compared with

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others, the defendant takes the plaintiff as they are and will be liable for the damages caused to the egg shell plaintiff.

Here, P can claim damages in the amount of the severe panic attack, because he had already been suffering from increasing anxiety and that he should be put back into position he would've been had the tort not occurred. Further, P will argue that it was reasonably foreseeable because D had knew about P's anxiety and mental condition. the panic attack was caused by the statement, and it was certain that the statement caused the panic attack.

However, D will argue that P had failed to mitigate because P did not seek medical treatment following the panic attack.

Thus, the amount of damages that P is entitled will be reduced by the amount that could have been mitigated by the seeking of medical treatment.

### **Nominal Damages**

Nominal damages arise when there is no specific damage that arose from the tort.

Here, there were specific damages, so nominal damages will not apply.

### **Punitive Damages**

The purpose of punitive damages is to punish and deter. It has to be coupled with legal damages or nominal damages.

Here, P knew about D's anxiety and fragile state as a first year law student. However, he still made the decision to publicly shame him in front of the class.

Thus, if the court sees this as something that's worthy of punishment and deterrence, then P will also be able to recover punitive damages.

### **Battery**

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Battery is intentional act that causes physical contact or offensive contact.

Here, no battery because there was no physical contact.

Thus, no battery applies here.

## **IIED**

Intentional infliction of emotional distress is an intentional or reckless act that is extreme and outrageous that causes severe emotional and mental distress. It does not require physical symptoms.

Here, D had intentionally made the statement. He also made in in a reckless manner because he consciously disregarded P's fragile mental condition. It was extreme and outrageous because professors generally do not publicly shame others for cheating unless they have definite proof.

However, P may argue that it was not extreme and outrageous because professors have responsibility to preserve academic integrity. Nonetheless, the court is likely to rule it extreme and outrageous because the statement contained personal jabs such as "two-bit actor".

There was severe emotional and mental distress of the panic attack. Simple humiliation may not have sufficed, but an actual panic attack would suffice for IIED.

Thus, P can sue D for IIED and seek the damages that he had sought under assault (see above.)

## **Negligence**

To prove the prima facie case of Negligence, it requires a proof of duty, breach, actual and proximate causation, and damages, unless defense applies.

### **Duty**

A person owes a duty to not cause foreseeable harm to others. Under the majority Cardozo view, a person owes duty to all foreseeable plaintiffs within zone of danger. Under the minority Andrews view, the person owes a duty to everyone.

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Here, P owed a duty to D because his verbal statement could have caused foreseeable harm.

The standard of duty is generally that of a reasonable prudent person standard. For professionals, the standard of care may be raised to that of an average professional.

Here, it is unclear whether legal writing professors are professionals, because professionals are generally doctors or lawyers. It is likely that P will be held to the standard of a reasonably prudent professor standard.

Thus, P owed a duty to D.

### **Breach**

Breach happens when a person falls below the level required under the standard of duty of care. It could be proven by custom, balancing, res ipsa, or negligence per se.

Here, D's conduct fell below that of a reasonable prudent professor because he did not have actual evidence of cheating, but nonetheless proceeded to publicly shame P in front of the entire class.

Thus, there was a breach of duty.

### **Causation**

Causation has two parts: actual and proximate cause.

#### **Actual causation**

Actual cause is proven by "but for" test.

Here, but for P's statement in front of the class, D would not have suffered severe panic attack.

Thus, actual cause was met.

#### **Proximate causation**

Proximate cause is measured by foreseeability. Basically, it tests whether the injury that was caused could have been foreseen by Defendant's acts.

Here, it was foreseeable that a public shame could lead to severe panic attack to someone who

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was already suffering from anxiety and going through the trauma of first year law school.

However, D will counter argue that not seeking medical treatment to alleviate panic attack was an intervening cause that wasn't foreseeable and hence cut off the chain of liability.

Nonetheless, the court will likely rule against this because it is foreseeable that people will not seek medical treatment after an injury. It did not cut off the liability.

Thus, proximate cause was met.

### **Damages**

Here, there was damages in the form of a severe panic attack. It was personal damage, that also required further treatment.

Thus, damage met.

In conclusion, the prima facie case for negligence has been met and P will be liable unless a defense applies.

### **Defenses to Negligence**

#### **Comparative Negligence**

Traditionally, contributory negligence was used that would bar a plaintiff's recovery if he were any liable. Modern trend has replaced with Comparative negligence which allows courts to apportion liability.

Here, there was no negligent act on the part by P because he did not copy J's paper. It was solely due to D's lack of care in checking that he was inadvertently showing J's own paper that led to the prima facie case of negligence.

Thus, no defense of comparative negligence.

#### **Risk of Assumption**

Risk of assumption is being aware and knowingly taking on risk associated with an act.

Here, P was completely unaware that he would've been publicly shamed in front of the class. He did not knowingly assume the risk.

Thus, no risk of assumption defense applies.

In conclusion, no defense to negligence applies and P will prevail in his claim against D.

### **NIED**

Similar to IIED, there is a cause of action when there is an infliction of emotional distress under one's negligence. It is different from IIED in that it requires physical symptom.

Here, negligence was proven (see above). There was clear emotional distress in the form of severe panic attack from the humiliation. It is likely that the severe panic attack had accompanied physical symptom of asphyxiation and a manic panic attack.

Thus, P will likely prevail in the NIED.

### **Damages - duty to mitigate**

See rule above.

However, as for the damages, D will claim that p had a chance to mitigate, by seeking medical treatment, but did do so.

Thus, the amount of damages will be reduced by the amount that could have been mitigated.

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**END OF EXAM**