

Question 5.

P owned and member managed “Day Spa & Massage Therapy Company, LLC.” P catered to men and women. Among other services, P offered Brazilian and bikini waxes – sometimes called “Sphynx,” bare waxing, or Hollywood waxing. To provide these services, P hired A, an Aesthetician, who had been fully certified and licensed by the school at which A had studied and by the state in which P was located. One day, T visited P’s company. T had never sought such services, but T’s friends had raved about P’s waxes. A met T at the service desk. T asked for a Brazilian wax. “A full or modified Brazilian?” A asked. T looked confused, and so A explained that a Full Brazilian (“FB”) would render T hairless from belly button to buttocks, and a FB required T would be naked from the waist down. A FB required A to touch T’s body and to adjust T’s body so that A could access every follicle of pubic hair. Next, A explained a Modified Brazilians (“MB”). A MB left a thin strip of hair at the top of T’s genitalia, *viz.*, a “landing strip.” T opted for FB. A again told T that A would have to touch T’s genitals to complete the waxing. T agreed, and T signed the service contract and initialed the space for acknowledging A’s information. T got undressed in a private salon, where T also drank hot herbal tea. At A’s behest, T, who was waist down naked, got on the waxing table. Once on the table, with instrumental tones wafting, T drifted into light sleep; A completed the FB. Upon awaking, T felt physically uncomfortable, asking A if A had touched T improperly. A, saying no, and feeling offended, walked out. Two weeks later, P received a letter from T’s attorney, in which T alleged that A had improperly touched T, causing T to seek counseling and drugs for post-traumatic stress disorder. Having worked with A for 10 years, P responded that A was a certified, licensed Aesthetician, who’d never had any such allegations filed by clients. T sued P, and in deposing A, P and T’s attorney learned that A had properly touched T during the FB. Nevertheless, T still felt that A’s touching was improper. In the suit, T alleged that A, cloaked with the apparent authority, had induced T by false representations to rely reasonably on A, so that A, while within the scope of employment, could cause harm to T. If P demurred, in effect saying “Yeah, so what!” to T’s pleadings, will the court find in favor of T?

- (A) Yes, because T had established that A was a servant who was placed into A’s position as an Aesthetician, which enabled A to harm to T.
- (B) No, because T expressly and impliedly consented to A touching T in any manner that was reasonable for A to provide the FB service that T requested.
- (C) Yes, because P benefited from the revenue paid by T to P for services performed by A.
- (D) No.