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## Damages: Final Examination (August 1958)

William & Mary Law School

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## I.

In a complaint for libel, Plaintiff alleged that Defendant newspaper printed the following false, malicious, scurrilous, libelous and defamatory article:

"Plaintiff's real aim was to defeat the bill so that we would revert back to the old practice of suing in the courts in these matters . . . That's what he wanted in his original bill--the option of a damage suit in the courts where the lawyers fee cut into the widow's share. He bragged on the Senate floor that he got a \$28,000 judgment for a miner's widow . . . by suing in the courts. But he didn't tell the whole story. He didn't tell the Senate that the \$28,000 judgment was settled for \$5,000--and that the widow got less than half of that."

Defendant newspaper printed the foregoing in reporting a speech by Defendant Doe who at the time was campaigning in behalf of Plaintiff's opponent for Congress. The speech as a whole was directed against Plaintiff's candidacy because of his stand on a "Death Benefits" provision of a Workmen's Compensation Bill once considered by the State Senate of which Plaintiff, but not Defendant Doe, was a member.

In addition to being a State Senator and Candidate for Congress, Plaintiff was an attorney who was very successful in personal injury damage suits.

Plaintiff further alleged:

" . . . That said libelous and defamatory article uttered and published by Defendant reflects upon his standing as a citizen, upon his integrity and honor as a State Senator; and that he has been caused to suffer great humiliation, embarrassment, mental distress, loss of respect, loss of political stature, loss of personal and professional stature, and loss of law business; that he has suffered injury because of said article in the sum of \$250,000, and prays judgment for said sum."

The State in which Plaintiff lived and practiced law and from which he was running for Congress has a statute making it illegal, with punitive provisions, for an attorney to take more than half of any amount recovered as attorney's fees.

You are attorney for Defendant Newspaper. What action, assuming all is regular in service of process, should you take, and what results do you expect to gain from your action? Why?

## II.

Plaintiff's husband, X, was a passenger in an auto driven by Defendant Doe when Doe's auto collided with an auto driven by Roe. X and Roe were killed, Roe dying shortly after X, but on the same day. It is agreed that the collision was caused by the negligence of Roe. Plaintiff, as widow and executrix of X, now sues Defendant, widow and administratrix, of Roe for wrongful death of, and personal injuries to, X.

Applicable statutes read as follows:

"1) All actions in law whatsoever, save and except actions on the case for slander or libel, or trespass for injuries done to the person, and actions brought for the recovery of real estate, shall survive to and against administrators, executors and conservators.

2) Whenever the death of a person shall be caused by the wrongful act, neglect, or default of another, and the act, neglect or default is such as would (had the death not ensued) have entitled the party injured to maintain an action, and recover damages in respect thereof, then, and in every such case, the person who, or the corporation which would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the party injured.

3) All damages accruing under the last preceding section shall be sued for and recovered by the same parties, and in the same manner as provided above, and in every such action the jury may give such damages as they deem fair and just, not exceeding \$10,000, with reference to the necessary injury resulting from such death to the surviving parties, who may be entitled to sue; and also having regard to the mitigating or aggravating circumstances attending any such wrongful act, neglect or default."

You are Plaintiff's attorney; Defendant is contending the action cannot lie. What argument do you advance on behalf of Plaintiff? Why?

### III.

The Defendant, a Sheriff, purporting to act under a warrant of attachment, seized a number of Ford automobiles, fitted for European driving, in Erie County, New York, which were then loaded on railway cars enroute from Detroit to New York for transshipment to Ford Dealers in Paris, France.

It subsequently developed that the warrant of attachment was void, and on trial of the case the judge instructed the jury that if Plaintiff Ford was entitled to recover at all, he was entitled to recover the value of the autos in Paris, France, less the cost of transporting them to, and putting them on, the market there. The evidence showed a shortage of cars in Paris.

You, as attorney for Defendant have failed to except to this instruction, but you did vigorously object to the admission of Plaintiff's testimony as to the value of the autos at the time they would have arrived in Paris in due course of transportation.

Having suffered an adverse verdict, you appeal.

What result should obtain on appeal? Why?

### IV.

Plaintiff's bulldozer was engaged in attempting to put out a fire and build a fire break on what appeared to be part of the right of way of a U. S. Highway. Actually, the fire was on private land, though on the highway side of a fence separating the road and an adjacent field. Defendant, under an easement from the property owner, had laid a gas transmission line about two inches under the surface of the area on which the dozer was operating. The blade of the dozer nicked the line, allowing gas to escape which, in turn, ignited, causing injury to the dozer that placed in beyond repair, though there was evidence of salvage value. All of the evidence, however, was conflicting.

Upon the finding of a verdict for Plaintiff, the trial court entered judgment for the amount found and added interest at the legal rate (6%) from the time of judgment. Plaintiff excepted to such action and appeals.

Since the jury found Defendant liable, what should the appellate court say about the correct measure of all of the damages in this case? Why?

### V.

X Auto Co., an auto sales agency, brought an action in replevin against Plaintiff claiming the right to one Packard auto. Plaintiff successfully defended the replevin action both at trial and on appeal.

Plaintiff now sues Defendant claiming that the previous litigation was brought about by the wrongful conversion by Defendant of the Packard which at all times was Plaintiff's property.

The evidence showed that Plaintiff, wanting to sell the Packard, drove to Defendant's place of business, unquestionably a retail auto sales agency. After talking to a salesman, Plaintiff drove the car home to clean it up. Two days later Plaintiff returned to Defendant's lot; the same salesman appeared and the two drove to an adjoining town to see a prospective customer on the representation that the customer would pay \$3500 for the car. But the salesman suggested that Plaintiff wait while the ground was broken, took the car and sold it to X Auto Co. instead of the intended customer. The salesman then disappeared with the money so acquired and is still missing. Plaintiff reported the incident to the police who found the car on X's lot, towed it in, and delivered it to Plaintiff. X thereupon initiated the replevin action which Plaintiff won.

V. (continued)

On the trial of the present action, Plaintiff was awarded \$600 attorney's fees and \$20 for loss of time, but was denied all other items of damage. Defendant appeals over the awarding of the attorney's fees, but Plaintiff does not cross-appeal from the adverse judgment so restricting his damages.

The applicable statutes allow "costs" to be recovered against an unsuccessful litigant; and allow attorney's fees only in cases of malicious prosecution.

What result should obtain on appeal? Why?

VI.

Plaintiff, employee of Defendant Barge Co., injured his back during the course of his employment on one of Defendant's barges. Shortly after the accident, Plaintiff was fired, but was given a "ticket" entitling him to receive treatment at X hospital. Plaintiff went to X and received superficial treatment. However, he was advised to go to Y hospital 200 miles distant because nothing more could be done for him at X, and a "ticket" enabling Plaintiff to obtain admission to Y was given him. Plaintiff maintained, however, that his back hurt too much to make the trip, and failed to report to Y.

Plaintiff sued Defendant for maintenance and cure under applicable statutes and obtained judgment. Defendant appeals. It is the law in the State having jurisdiction of the case that an offer of hospital services is a fulfillment of the shipowner's obligations to furnish maintenance and cure to injured seamen.

What results should obtain on appeal? Why?

VII.

The United States, in order to obtain land for use of its Air Force, commenced condemnation proceedings against many property owners, in 1950, in Hawaii. All of the actions have been consolidated. X, one of the persons from whom land was taken, had leased certain of the lands by virtue of written instruments which expired in 1943 and which reserved condemnation rights to the lessor. There were many discussions and negotiations, but a renewal of the lease was never executed. However, as a result of the negotiations, X continued to use the lands, though at all times a formal agreement was anticipated. Other portions of X's lands were owned in fee by X and all were contiguous except one 500 acre tract which X held under oral lease.

X introduced testimony, by experts, as to the valuation of the properties as a whole including other lands on which it had valid leases, and which were also contiguous, though which were not taken in the condemnation action. Such values were based on invested capital, upon X's earnings, and upon X's value as a going concern, both before and after condemnation.

The trial court awarded damages of \$440,175.00 on the properties not owned nor under formal lease by X, but declined to award anything on the 500 acre tract. Both the Government and X appeal. What result should the Court of Appeals render? Why?

VIII.

Defendant, owner and operator of a fleet of gasoline tank trucks was welding brackets on the side of one of such trucks. The truck was empty of liquid, but it had not been "blown out." An explosion resulted of tremendous force.

Plaintiff, an expectant mother, was visiting at the home of a friend about a block away from the scene of the explosion.

Plaintiff testified at trial: (1) That upon the explosion the baby sumersaulted, then dropped (but wasn't born); that Plaintiff became dizzy, sick to her stomach and completely unnerved; (2) that from the date of the explosion to the date of the child's premature birth, Plaintiff suffered anxiety and ill health; (3) that it was necessary for the baby to remain in the hospital for seven and one-half weeks in an isolette following birth; (4) that the child at time of trial was nine months old, had progressed satisfactorily, though still weak, frail and underweight.

The trial court instructed the jury that if, from a preponderance of the evidence, they believed the testimony of Plaintiff they might return a verdict for Plaintiff based on the above items of damage. Plaintiff was handsomely rewarded by the jury. Defendant naturally appeals. What result? Why?

IX.

Plaintiff gave Defendant permission to go upon his land to remove underbrush and weeds in order to clean the boundary line between their properties. Defendant did so, removing some of Plaintiff's trees in the process.

Defendant denied cutting any large trees, and further maintained that the purpose of the cutting was to improve the view, and that both parties benefited from the work.

Plaintiff testified that the cutting of the trees, which were on a river bank, allowed debris to pile upon his land when the water was high, and that the cutting of the trees caused "much damage to the land value as they cannot be replaced."

Plaintiff also testified, and other evidence in her behalf showed: (1) Defendant cut 132 trees ranging from two to twenty-four inches in diameter along the river bank; that the river overflowed two to three times a year; that she had paid \$2500 for the property and was very fond of it; (3) that her damages were \$1000.

Defendant introduced evidence to the effect that the cutting had enhanced Plaintiff's land in value; that the cutting caused no erosion of the soil along the river.

The court instructed the jury that the measure of damages, if any, was the difference in value of her premises immediately before and immediately after any injury resulting from the destruction of trees sustaining the banks of the river, if any, to prevent erosion.

Neither party objected to the admission of the other's evidence nor to the foregoing instruction.

The jury awarded Plaintiff \$500. You are attorney for Defendant, and after having had your motion to strike all of the Plaintiff's evidence overruled, appeal. On what ground do you base your appeal? Why?

X.

Defendant constructed a dam which seeped onto Plaintiff's lands ruining his crop. Plaintiff claimed damages and was paid by Defendant upon the signing of a release for "damages . . . from seepage waters of the dam and interference with the drainage of the lands I have suffered or may suffer for the year 1950."

Later that year Defendant constructed intercepting ditches to catch seepage from the dam. The following year Plaintiff's lands were flooded, again due to seepage from said dam. Plaintiff sues for the 1951 seepage damage.

At the trial Defendant introduced evidence to the effect that seepage was a temporary problem; that as time passed the porous condition of the dam would correct itself; that the 1950 flooding had not entirely abated.

Plaintiff alleged damages for loss of crops based on the fact that he could not get to certain sections of the land to work it, in the amount of \$1015; damage to land fertility, \$163,50; damages for loss in the sales of cattle based on inability to raise sufficient feed, \$400; and damages to his woodlot of \$100. Plaintiff's testimony alone supported his allegations.

The jury was instructed that the damage from the dam was temporary; that the damage to the crops was the rental value of the land; and the jury gave a verdict based on Plaintiff's testimony. Can any part of the verdict be allowed to stand on appeal? Why?