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Torts: Final Examination (May 27, 1963)

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1. P was a passenger in a public bus owned by the D Bus Company while the bus was going east on a three lane highway the middle lane of which was a passing lane A, the bus driver, noticed that X was driving a car going in the same direction as the bus and that X was weaving back and forth between his right hand lane the passing lane without any reason for doing so. A started to pass X while A was in his right hand lane. A did not sound his horn as he supposed X saw him in his rear view mirror. As the bus was in the passing lane X swerved to his left and struck the bus causing it to go down an embankment. P was injured. P sued the D Bus Company only. At the conclusion of the presentation of the evidence, the D Bus Company moved for a directed verdict, and P asked for an instruction to the effect that the only question for the jury was the amount of damages to which he was entitled. How should the court rule and why?

2. The Florence Crittenden Foundation has a large income from monies invested in stocks and bonds. It uses this money in the maintenance and operation of homes to help wayward girls and unmarried mothers. One such home was owned and operated by the Foundation in a residential portion of Seattle. There were from ten to twenty young women in the home from time to time. Their physical, spiritual, recreational and other needs were taken care of, and those in charge were extremely dedicated individuals. There was evidence that every now and then, during recreational periods, there was loud laughter, and that on one occasion some of the girls had acted immodestly as gentlemen went by the home.

H was a lessee for one year of a residence next door to the home, and he lived in this residence with his wife, P, and their two teen age sons. After H had refused to take any legal action, P sought damages and an injunction against those in charge of the home.

What points of law are involved, and how should they be decided? Give reasons.

3. & 4. D owned a railroad and was in possession of/certain freight train made up of a diesel engine followed by a caboose and fifty freight cars. It proceeded along a siding until it reached a switch. This switch had been thrown so that the train could go over to the main track. After 9 cars had passed over to the main track the train was stopped for a proper purpose for about two minutes. During this period a muscular five year old boy threw the switch back to its original position. To do this the boy had to remove an S shaped hook, lift a 30 pound weight to an upright position and let the weight down in a reversed position. This was the first time in forty years that anyone had tampered with one of D's switches. Within a moment or two after the switch had been thus tampered with, and in ignorance thereof, D's employees started the train. After it had proceeded a few car lengths and reached a speed of five miles an hour, the engineer thought something was wrong. And there was! The cars back of the switch proceeded up the side track they were on, became derailed, and ran into P's building. P sued D for the resulting damage on both negligence and trespass theories.

(a) Is D liable on a negligence theory? Consider, among other matters, the application, or the lack thereof, of the doctrine of res ipsa loquitur and the question of causation.

(b) Is D liable on a trespass theory?

(c) Would P be entitled to a judgment as against the child or the child's father?

(d) If freight on the train had been injured, would D be liable for such damage?

Give reasons in each case.

5. The X Corporation which was engaged in manufacturing in Virginia employed 125 persons. Twenty-five of these employees lived some distance away from their work. The X Corporation paid A 50¢ per passenger per day for taking these persons to and from their work. P was such a person, and was ordinarily the last one to be let out of the bus. On April 7, 1962, the bus collided with D's automobile at an intersection after all other passengers had been discharged. A was killed. P was injured, but at the time of the collision was absorbed in reading a magazine and he has no idea what happened. The only other eye witness was D who told a most improbable story. There were no skid marks. What are P's rights, if any, as against D? As against A's personal representative, and as against the X Corporation? Give reasons in each case.

6. & 7. The following series of tragic events occurred in the State of New York in 1962. P was driving his car at a proper speed on a principal highway. His wife W, who was some 195 days along in her first pregnancy, was in the front seat beside him. D pulled out from an obscured private road without any warning in front of P who applied his brakes at once for all he was worth, thereby barely avoiding a collision. D instead of being grateful, stopped his car, got out, cursed P and said, "You damned idiot, you came within an inch of hitting me. I'm going to beat the hell out of you." Before D could carry out this threat he was restrained by third parties. While P and D were still arguing, a police officer, O, arrived on the scene. Although he had no warrant he arrested both P and D for reckless driving. The excitement caused W to give premature birth to her child, C, who was placed in an incubator and oxygen tent. For several weeks it was touch and go as to whether or not C would live. He survived but was blind. The medical evidence was to the effect that the incidence of blindness is some sixty times greater in children born so prematurely than it is in those born in normal course, that someone had given C too great a concentration of oxygen at some time or other, and that the blindness could have been caused thereby.

Answer the following questions as per New York common law. (If in doubt assume that New York common law is in accord with the majority view where there is a substantial conflict of authority) in paragraphs corresponding to the number of the question giving reasons in each case.

- (1) Does P have a cause of action against D for the insulting, abusive and threatening language used by D?
- (2) Does P have a cause of action against O for false arrest?
- (3) Has W a cause of action against D for mental suffering?
- (4) Has P a cause of action against D for the extra medical expenses caused by C's premature birth?
- (5) Has C a cause of action against D for loss of his eyesight?

8. T, a professional automobile thief, stole P's car and sold it to A, a dealer in second hand cars, who purchased it in good faith and for value. B told his friend, C, that he would like to buy a good used car. C replied, "I saw one for sale at A's place of business. I thought it was a good buy. It seems to be exactly what you want." B went to A's place. D, a salesman, demonstrated the car, and sold it to B who paid cash for it. A month later P saw the car in front of B's house, recognized it as his own, and by the use of a duplicate key took possession of it.

- (1) If B were to bring a possessory action against P, what judgment and why?
- (2) Which of the following, if any, were convertors of P's car: A, B, C, D? Give reasons.

9. D owned a house which he wished to sell to P. He told P that the house was rented to a most desirable tenant at a rental of \$200 per month. He did not tell P that the tenant had never paid his rent until threatened with legal proceedings, and then only in dribbles of \$50 or so. P purchased the house, but when he found out what kind of a tenant was in it, he sued D for damages for misrepresentation. Judgment for whom and why?

10. C was convicted of embezzlement and sentenced to serve a term in the penitentiary. D, his lawyer, petitioned the Governor to pardon C. In his petition, D stated, "The embezzlement prosecution was instigated by P and others for the sole purpose of ruining C's reputation. The whole case is a frame up from beginning to end. P is an immoral person unworthy of belief." These allegations were based on statements made to D by C. D took them at face value and made no further investigation. The allegations in fact were untrue. P sued D for libel. What judgment and why?