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## Torts: Final Examination (May 23, 1964)

William & Mary Law School

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1. A lent his car to X. B lent his car to Y. The two cars collided due to the negligence of X and Y. A's car was damaged to the extent of \$1,000, and B's car to the extent of \$2,000. X was half again as much to blame as Y. What, if any, are the rights of A and B? Give reasons.
2. D falsely represented to P that a certain house D wished to sell to P was a brick house built according to accepted standards for such houses. As a matter of fact it was only brick veneer--i.e., a single layer of brick to give the impression that it was a brick house. P paid D \$20,000 for the house. It was easily worth \$24,000 if it had been a properly constructed brick house, but only \$18,000 as it was actually constructed. What, if any, are P's rights against D?
3. Commercial trucks are not permitted on the Colonial National Monument Parkway between Yorktown and Jamestown. P nevertheless drove his truck on the Parkway. D negligently ran into P's truck while on the Parkway damaging it to the extent of \$2,000. What, if any, are P's rights against D?
4. In State X no life insurance on the life of an adult is valid unless the insured adult consents to being insured. H and W were husband and wife. W forged H's name to an application for life insurance, paid the premium, and shortly thereafter poisoned H, who was made extremely sick but did not die. H sued the insurance company. The evidence showed that the insurance agent had reasonable grounds to suspect that H had not consented to be insured. What judgment and why?
5. State X has the commonest type of death by wrongful act statute. D negligently ran over and killed a normal two year old child. There was no doubt about D's negligence, and D's insurer admitted liability. The jury returned a verdict as follows, "We, the jury, find for the plaintiff and fix his damages at no dollars." Should the trial court set aside the verdict? Give reasons.
6. While P was assisting his brother, D, to locate the cause of a noise in a feed grinder while it was being operated at high speed, a blade of the blower fan broke off and struck P in his face inflicting serious injury. What, if any, are P's rights against D, and M, the manufacturer of the grinder? Give reasons.
7. South Carolina has an uninsured motorists' law which permits an insured motorist to recover for damages done by the wrongful act of an uninsured motorist in the operation of a motor car when the uninsured motorist cannot pay. These damages are recoverable from the insured motorist's insurance company. X, an uninsured motorist, while intoxicated, drove his car in the wrong lane at an excessive rate of speed in utter disregard of P's rights. P was an insured motorist. P sued X and recovered a verdict of \$8,000, five thousand of which was for compensatory damages and three thousand for punitive damages. X was completely irresponsible. The statute was silent as to whether or not the insurance companies were liable for punitive damages awarded plaintiffs in actions against uninsured motorists. Is P entitled to a judgment of only \$5,000 against his insurance company? Give reasons.
8. The D Newspaper published a story about Harold Newstead "30 year old Richmond man" who was convicted of bigamy "and who liked having two wives at once." This story was true of a Harold Newstead who was a tavern keeper in Richmond. P, however, who was a 30 year old Richmond barber, sued D for libel, and proved that some of his customers read the story and thought that the story referred to him. What judgment and why?  
*P's name was also Harold Newstead.*



9. After P had closed his store he met D. According to P's testimony, D asked P about a certain heater; P replied that he was out of that item; D said that P had promised to get it for him; P said that he didn't remember making any such promise; D then struck P a violent blow with his fist, saying, "Don't you call me a liar." According to D's version P called D a liar when D told P he had promised to get the item, and struck him whereupon D struck P to prevent being hit again by him. Each party was corroborated by witnesses. The court instructed the jury, "Self defense is recognized by the law, and guaranteed to all of its citizens, and should be considered by you, together with all the other facts and circumstances and evidence in the case in determining who provoked the difficulty, and you are instructed that, if at the time the defendant is alleged to have assaulted and struck the plaintiff the defendant in doing what he did was acting in an effort to protect his own person or life, and the circumstances then surrounding the defendant were such in the exercise of reasonable judgment would justify or induce in his mind an honest belief that he was in danger of receiving some great bodily harm, judging from the standpoint of the defendant, then the defendant would be justified in doing what he did, and your verdict should be for the defendant."

The jury returned a verdict for P for \$6,000 damages (because of a serious eye injury) and defendant moved the court for a new trial on the ground that the above instruction was erroneous as applied to the circumstances of this case. Assuming that D had objected to the instruction when offered, should the court grant a new trial? Give reasons.

10. The D Corporation owned a fenced in lake which it used for a recreational center for its employees. There was a raft which could be moved about and from which people could dive. Swimming was permitted from May 1 through September 1. P, an employee, went to the lake on March 21 which happened to be an unseasonably warm day, and he told the caretaker he was going in swimming. The caretaker raised no objection. P ran, jumped on the raft, and dove headlong into the lake. The water at that point was only two feet deep, and P suffered injuries which resulted in paralysis. The jury awarded P \$316,000 damages, and the court entered judgment for P for that amount. D appealed claiming that the verdict and judgment were contrary to law. What result on appeal and why?