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TORTS

May 24, 1969

Mr. Torcia

Time - 3 hours

Note: The questions are equally weighted.

I.

A, a former heavyweight wrestler, walked into a tavern and there heard B, a relatively small man, bragging about how strong he was. A declared sarcastically: "A good wind would blow you over." B became enraged and said he was going to punch A in the nose. B charged toward A with his fist raised. But A, experiencing no fear because he was so much bigger than B and because he was certain he could avoid the blow, simply laughed. C, however, who was standing just behind A, was an abnormally timid man, and he experienced great terror in apprehending that he himself might somehow get hurt as a result of B's charge. When B swung at A, A ducked, grabbed B's outflung arm, and tossed him across the tavern floor, causing B's body to crash against D, resulting in injury to D. Discuss the liability, if any, of A, and of B.

II.

In determining liability for harm caused by negligence, explain how each of the following classes of defendants is treated by tort law:

- (a) Insane persons
- (b) Unconscious persons
- (c) Children

III.

A, upon leaving a movie, happened to meet B and the latter asked her if she wanted a ride to her home. Knowing of B's inclination to drive at high speeds, A was somewhat hesitant. Finally, A said: "If you promise to hold down on the speed, I will be happy to accept your offer for a ride." B replied that he would do so. However, he took off like a rocket and proceeded to travel at a very high speed. When she demanded that he cut down his speed, he simply laughed. A said nothing thereafter -- claiming, by way of excuse for her silence, ^{that} any demand of B to stop and let her out would have been unavailing or, worse still, might have irritated him to the point of causing him to drive in an even more dangerous manner. While rounding a sharp curve in the highway at a very high speed, B came abruptly upon a slowly moving farm tractor. He hit his brakes to avoid a collision, but they did not operate, and so he veered off the road, struck a tree, resulting in injury to A. (In discussing the liability, if any, of B, you are to make the following assumptions: That B knew his brakes were defective, and A did not know of this; that B's driving at a high speed, viewed alone, amounted only to "negligence"; that, quite apart from his speed, B's driving with knowledge that he had defective brakes, in and of itself, amounted to "recklessness"; that had B been traveling at a reasonable speed, and had his brakes not been defective, he could have stopped in time to avoid a collision with the tractor; that his speed was so great that even if his brakes had not been defective, he still would have been forced to veer off the road to avoid a collision with the tractor.)

IV.

In discussing the liability, if any, of A in each of the following situations, you are to assume, where relevant, that shooting a squirrel is not wrongful:

(a) A aimed his gun at and shot what he believed to be a squirrel. It turned out to be B's cat, and the cat was killed.

(b) A aimed his gun at a squirrel and, just as the trigger was pulled, B's cat jumped out from behind some bushes into the path of the bullet, and the cat was killed. The bullet entirely missed hitting the squirrel.

(c) A aimed his gun at and shot what he believed to be B's cat. It turned out to be a squirrel, and the squirrel was killed.

(d) A aimed his gun at B's cat and, just as the trigger was pulled, C's cat jumped out from behind some bushes into the path of the bullet, and C's cat was killed. The bullet entirely missed hitting B's cat.

V.

A, as a result of his "negligent" driving of his car, went off the road and struck a tree. He was trapped in his car and bleeding badly. B, a passing motorist, observing A's predicament, stopped his car and hastened to render aid. A warned him that a fire might break out at any moment. Despite the warning, B went ahead and succeeded in helping A out of his car but, as he was doing so, a fire developed and B was severely burned. At about this time, C, another passing motorist, attracted by the fire, stopped his car to see what was happening. When B requested C to drive him and A to a hospital, C replied: "No, I do not care to get involved." As C was leaving the scene, B said: "But A may bleed to death; will you at least telephone for an ambulance?" C said that he would do so. But C, although he had an opportunity to make the phone call (having come upon a service station shortly after leaving the accident scene), again decided not to get involved and did not phone for an ambulance. In the interim, no other passing motorist stopped to render aid to A and B and, eventually, A did bleed to death. In discussing the liability, if any, of A (through his personal representative), and of C, you are to assume that had the ambulance been summoned, A's life would have been saved, and you are also to assume that the injuries of A and B were so severe that neither party was able to help the other and that neither party was able otherwise to go out and solicit aid from others.

VI.

A in his car came out of a side road intending to make a right turn onto the main highway. He looked to his left and observed B in his car coming down the highway. A was in a position to accelerate rapidly and join the flow of traffic safely ahead of the approaching car of B. But A did not do so; but rather he moved slowly onto the highway and assumed that B would see him and would slow down, thereby avoiding a collision.

In discussing the liability, if any, of B in each of the following situations, you are to assume that A's conduct amounted only to "negligence"

(a) B observed A and had enough time to slow down and thereby avoid a collision. But when B hit his brakes, they failed to operate.

VI. (continued)

(B had not known that his brakes were defective, but he was "negligent" in that he had not had his brakes checked for over a year). So B's car continued on its path and collided with A's car, resulting in injury to A.

(b) Would your answer to (a) be different if B had known that his brakes were defective?

(c) Would your answer to (a) be different if B, because of inexperience in driving, "froze" at the wheel and did not hit his brakes at all?

THE END