

1971

## Torts I: Final Examination (January 16, 1971)

William & Mary Law School

---

### Repository Citation

William & Mary Law School, "Torts I: Final Examination (January 16, 1971)" (1971). *Faculty Exams: 1944-1973*. 268.  
<https://scholarship.law.wm.edu/exams/268>

## FINAL EXAMINATION

TORTS I

(Limit your answers to two pages in your blue book.)

- I. D, a local delinquent 12 years of age, having nothing better to do, decided to attend the annual horse show. When he arrived at the crowded grandstand he noted an attractive girl (G) whom he knew to be a local trollop, standing in front of him. Being a precocious boy, he gave her a pat on the posterior and passed on. She made no objections and, in fact, seemed rather pleased. After learning that D was heir to a rather substantial estate, G decided that his actions were insulting and degrading. Later he observed a member of a rival gang (M) standing with his back to him. D decided to even an old grudge. He picked up a club and was about to strike M when he saw a policeman. He dropped the club and ran. M was never aware of his presence. D then moved near the gate where a steeplechase was about to start. He noted that a friend of his older brother was riding in the race. Hoping to help his brother's friend get a quick start he took out his trusty slingshot, placed a broken piece of glass in the pouch and, when the starting gun sounded, he fired the glass at his brother's friend's horse. The missile missed its intended target but struck the horse being ridden by a young matron (Y). The horse spooked, bucked and threw Y to the ground inflicting grievous injuries.

G, M & Y consult with you as to any cause of action they might have against D and if they do, what damages they might expect to recover.

- II. An insurance adjustor (A) called at the residence a matron (M) who had been slightly injured in an automobile collision and asked that she sign a release in return for a token settlement. It was apparent that M was pregnant. She stated that she wished to wait awhile to be certain that she had no latent injuries. A, being quick tempered and suffering from an ulcer, flew into a rage and accused her of attempting to "hold-up" his company and suggested, rather bluntly and in the vernacular, that she was born out of wedlock and that her ancestry was of the canine family. He slammed the door in a violent manner as he left the house. M is a particularly sensitive lady and she suffered grievously. It was weeks before she was able to sleep well and her thoughts were rarely of anything but this incident. She suffered no other injuries and has now returned to her normal self.

(1) Is A liable to M? Why?

(2) Assuming, regardless of your answer to (1) above that A is liable, what damages can M recover and why.

- III. A wealthy widow (W) was being driven in her limousine by her chauffeur (C) to a tea when her car collided with one being driven by a builder (B). The collision occurred at a dangerous intersection where there had been many collisions before. To prevent further accidents a local citizen had erected a "Through Traffic, STOP" sign on one of the intersecting roads. B had seen the sign many times but always chose to ignore it, always driving through it without stopping or looking and did so on the day in question immediately prior to striking W. Section 577 of the Vehicle Code provides: "Vehicles Must Stop at Through Highways. The driver of any vehicle upon approaching any entrance of a highway or intersection posted with a stop sign as provided in this code shall stop at such sign before entering such intersection." C has now been discharged by W because of his slovenly ways and has told B and others that the car he was driving had faulty brakes. He states that he informed W of this fact several times and that on the day of the accident he suggested that they take another car. She replied, "No Charles, just drive very carefully." C states that he could have stopped before striking B's car if the brakes had not been faulty. It is rumored that B's business is not doing well and that he needs new capital. B has now instituted suit against W for \$100,000.00. She has heard through a mutual friend and you have been able to confirm that B has only \$10,000.00 in liability insurance. ~~W~~<sup>B</sup> retains you as her attorney. She admits that the brakes on her car were faulty. She states that she does not carry liability insurance and that even though she is wealthy, she can ill afford to pay such a staggering sum. However, a law suit with all its attending publicity is very distasteful to her and she wants to avoid it if at all possible.

Analyze the issues and state succinctly your advice to W.



IV. A plaintiff (P) brought suit against the Cha Cha Cola Bottling Company (C) for personal injuries. She testified that she purchased a six pack of Cha Cha Cola which had been bottled in defendant's plant and that after arriving home she placed it on the kitchen table in a normal fashion whereupon one of the bottles violently exploded spewing glass and cola in all directions. Several pieces of glass struck her in the face and eyes resulting in disfiguring scars and partial blindness. Plaintiff's counsel rested his case. Defendant demurred and requested a directed verdict. Plaintiff countered with the argument that the doctrine of res ipsa loquitur (you may abbreviate as "RS") applied and asked for a directed verdict if the defendant should produce no evidence.

- (1) State the doctrine as you understand it and how it applies to the facts of this case if in fact it does.
- (2) Was the plaintiff or the defendant correct as to its procedural effect?
- (3) Perhaps neither was correct, if not, what is the correct procedural effect in the great majority of jurisdictions.

V. Through the negligence of the defendant railroad company's (D) employees a train was derailed in Kansas and many freight cars were overturned and crushed. Highly unstable explosives in one car exploded wrecking A's house which stood immediately adjoining defendant's right of way. The concussion caused a wall to collapse a block away killing B. Sparks and burning debris from A's house were carried by extraordinarily high winds for ten miles where they ignited wheat fields belonging to C. The noise and concussion, while not great at that distance, caused mink on X's farm two miles away to eat their young.

Discuss D's liability for the above events. You may assume that Kansas applies the majority rule for establishing proximate cause.

VI. A contractor (D) burned waste materials for days on the back of his storage lot. While the fire was burning his employees supervised it and chased away boys who were attracted to the conflagration. On Halloween night, after the fire subsided and apparently the ashes had cooled, the contractor removed his employees. Three brothers A, B and C aged 17, 12 and 7 respectively were celebrating the holiday in the tolerated fashion by playing tricks on their neighbors. They climbed D's high fence with its locked gate and noted the pile of ashes with little whiffs of smoke curling up from it. They decided it would be great fun to scatter the ashes about D's lot. There were very hot coals under the surface and when they went frolicking into the pile each of them was badly burned.

Discuss the basis of defendants liability if any as to A, B and C.

END