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Torts II: Final Examination (May 24, 1971)

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Torts II

Mr. Bahr

Mr. Williamson

Instructions:

The examination consists of six problems of varying weight, totaling 100 points. Each problem states the weight to be given to such problem and a suggested time limit. The suggested time limits are based solely on a proportion of the total time for the entire examination equal to the per centage weight given to individual problems. Answer all questions. Do not put your name on your bluebooks. Be sure that your examination number appears on all bluebooks used.

I. (30 minutes - 17 points)

John, a 22 year old college student and his 21 year old girl friend went swimming in the York River early one afternoon. John proceeded into the water for a distance of about 100 yards. While watching his girl friend still on the shore, John was struck by a power boat driven by the defendant, and as a result thereof, sustained serious injuries. John's girl friend has stated that she observed the defendant for a substantial period immediately prior to the accident and that up until the moment of impact, the defendant was looking backward at a skier he was pulling. The defendant, during the taking of his deposition, stated that at all times immediately preceding the accident, he was looking straight ahead and was not aware of John's presence in the water until after the accident. At the point in the York River where John was swimming, a sign, which John admits he saw, states as follows:

"Warning: Swimming in this area is dangerous due to strong underwater currents".

Based upon the foregoing facts, under what theory or theories could John recover against the defendant? Explain fully. Discuss all issues fairly presented whether or not dispositive of the case.

II. (15 minutes - 9 points)

Edgar persuaded his friend Alan to teach him how to drive. Edgar had never driven an automobile before and had only a beginner's permit. On the day of the accident (hereinafter described) Alan was teaching Edgar how to put on his brakes to stop, how to speed up, slow down and what distances it would take him to stop. During the course of the day, Edgar was learning very quickly and was gaining great confidence in his ability. On the way back to Edgar's house, Edgar stopped to pick up a hitchhiker named David. Alan moved to the back seat to make room for David. Neither Edgar nor Alan told David that Edgar was just learning to drive. Alan, being very tired, went to sleep in the back seat and remained asleep until the accident. Edgar thereafter, began to drive at an excessive rate of speed. David became worried and told Edgar to slow down. Edgar said, "Hello, boy, you ain't scared, are you?" David told him that he wasn't. Edgar did not reduce his speed. About one or two miles down the road, Edgar lost control of the car, resulting in an accident causing serious injury to both David and Alan. Assuming that Edgar was negligent in driving at an excessive rate of speed, and without regard to the right of a "guest" to recover in a situation such as this, what are David and Alan's respective chances of recovery against Edgar? Explain fully. Discuss all issues fairly presented whether or not dispositive of the case.

III. (15 minutes - 9 points)

Barnes and Lennon are owners of adjoining residential tracts in the City of Winchester. Adjacent to their lands, the defendant built a sewage disposal plant which, in spite of the fact that it was built and is operated in accordance with specifications which ordinarily resulted in odorless plants, had daily sent objectionable odors over such lands since it was constructed in 1965. Barnes and Lennon purchased their lands in 1960 and 1968, respectively. On days when the wind is blowing in a southerly direction, the same objectionable odors are present throughout the city, and draw numerous complaints. Otherwise, only Barnes and Lennon's properties are affected by the odor. What are Barnes and Lennon's chances of enjoining future operations of the plant and/or recovering damages for the diminution of the value of their properties (which they allege is substantial)? Explain fully. Discuss all issues fairly presented whether or not dispositive of the case.
IV. (45 minutes - 24 points)

The E-Z Manufacturing Company was in the business of manufacturing grinding wheels for industrial and consumer uses. Like other manufacturers, it maintained a research staff which carried on continuing investigations looking toward improvement of the company’s products. One of the engineers on the staff was working on a new plastic grinding wheel. Initial experiments suggested that a plastic grinding wheel could do a better job than a traditional grinding wheel, yet could be produced at a substantially lower cost. The engineer reported the results of the research to a scientific meeting at which representatives of the Hi-To Golf Cart Company were present. This report led Hi-To to believe that the new plastic grinding wheel might be useful for grinding the component parts of their carts. Because it would lower production costs, it would also give Hi-To a strong competitive position in the cart market. Accordingly, the Cart Company approached E-Z, seeking to buy a supply of the plastic grinding wheels. E-Z pointed out that it had had little experience with the new plastic wheels and no experience whatsoever as to their usefulness for grinding component parts for golf carts. Discussions continued which finally led to the signing of a sales contract for a supply of the plastic grinding wheels. In the contract, E-Z properly excluded all express and implied warranties in the method authorized by the Uniform Commercial Code which was effective in the state.

It turned out that the grinding wheels were wholly unsatisfactory for the Hi-To operations. Inevitably the wheels shattered after a few minutes of service and damaged the component cart parts. Accordingly, Hi-To sued E-Z in strict tort for its damages. An employee of Hi-To, who had been injured by the shattering of one of the grinding wheels also filed suit against E-Z under a strict tort theory. A local citizen, who was on one of the daily tours of the Hi-To plant and was injured by the shattering of one of the grinding wheels, also filed suit against E-Z under a strict tort theory. The three suits were consolidated for trial.

E-Z's motion for summary judgment has been submitted to a three judge court. As the third member of this court you must decide the case because your co-judges are divided in their opinions. Raise and discuss the issues involved from both sides, whether or not dispositive of the case. Discuss the liability of defendant to each plaintiff separately. Decide the case.

V. (45 minutes - 24 points)

Arthur Andrews, a farmer, sells Blackacre to Bill Buffo, representing that it contains 200 acres, that it will produce 40 bushels of wheat to the acre, that the federal income tax law exempts farmers' income derived from growing wheat, and that a cooperative electric company will be organized within a year. Bill, a city man, after looking over the place, pays $20,000 for it (this price works out to $100 per acre), $10,000 in cash, the remainder a month later.

In fact there is a mortgage of public record of $5,000 on the place; it contains only 195 acres; 40 bushels of wheat can be raised only by uneconomic fertilization; there is no exemption from federal income tax and no cooperative electric company has been started. Further, although not mentioned, the county is planning to run a drainage ditch through the middle of Blackacre which would seriously diminish its value and use. What are Bill's rights when he discovers the facts a week after making the first payment, in view of any or all of Arthur's statements? Soparately discuss all issues raised whether or not dispositive of the case.

VI. (30 minutes - 17 points)

The publisher of the "Local Garbage Wrap", a morning newspaper, published on its front page the picture of Paul Jones as the ugliest man in the world. Underneath is this item: "After years of searching we have discovered the ugliest human being in all the world. He is a coal miner who has received fabulous offers for the right to use his picture for advertising purposes but has refused all of them. Look at his mug! He could pull down thousands of dollars a year by simply appearing live and in color on television for a few moments each day, and without saying a word. Yet he refuses to commercialize his mug. We were only able to get his picture by the strategy of persuading a friend of his to photograph him while he was relaxed and oblivious of what his friend was doing. His mug is worth a million and this picture cannot be reproduced without our written permission. Copies and permission to use the picture can be arranged for through our Business Office".
Paul Jones has consulted you about legal action in connection with the above facts. Has Paul an action? For what? Discuss all issues raised whether or not dispositive of the case.