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Torts I (A): Final Examination

William & Mary Law School

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1. Defendant physician arrives at the scene of an accident and attempts to render aid.
   a. Plaintiff A, a child, is unconscious and bleeding badly. Defendant, without getting permission from anyone, treats him.
   b. Plaintiff B, an old man, is conscious and orders the doctor to leave him alone. The doctor treats him and it is conclusively shown that the treatment was skillful and beneficial.
   c. Plaintiff C, a luscious young movie star, is uninjured but, tired of waiting for traffic to get moving again, she has fallen asleep on the seat of her automobile. Defendant, seeing that she is not hurt, but desirous of being able to tell his friends that he kissed a famous movie star, plants a kiss on the plaintiff’s cheek. She does not awaken, but is later told about the incident.

All plaintiffs sue for battery. Who recovers? Why?

2. On his way home one night Plaintiff is accosted successively by three men. The first man slouches up to plaintiff, makes a threatening gesture, and says “If you don’t give me your money, I’ll kill you.” A little further along, a second man approaches, waves a club at plaintiff, and says “If you weren’t such an old man, I’d kill you.” Finally, plaintiff encounters a third man who pulls a pistol and points it at plaintiff. The pistol is later shown to be a realistic toy. Plaintiff learns the identity of all three men and sues each for assault.

Recovery against whom? Why?

3. Plaintiff encounters his neighbor on the street one day. Plaintiff demands that neighbor return his lawn mower. Neighbor replies “You crazy old fool, I haven’t got your blankety-blank lawn mower.” This is overheard by passers-by. Plaintiff is so mortified that he suffers a nervous breakdown with resulting physical illness. He sues for mental distress.

What result? Why?

4. Defendant obtains plaintiff’s permission to put a campaign poster on a tree on plaintiff’s land. Plaintiff permits this with the specific provision that the poster be removed on the day after election. The poster is not removed. Plaintiff sues for trespass.

What result? Why?

5. Landlord wrongfully re-enters an apartment in tenants absence, removes all of the furniture, and re-rent the apartment. Landlord stores the furniture in a warehouse under tenant’s name, intending to tell tenant where it is so tenant can recover it.
   (a) Landlord forgets to give tenant the information. Tenant sues Landlord for conversion. What result? Why?
   (b) Landlord gives tenant the message, but before tenant can get the furniture, the warehouse burns down. Tenant sues Landlord for conversion. What result? Why?
   (c) Landlord sells the furniture to Third Party, who is unaware that it is really tenant’s furniture. Tenant sues Landlord and Third Party for conversion. What result? Why?
6. (a) Plaintiff is injured. Defendant states that he is a doctor and offers to help her. Plaintiff consents to the treatment. In fact, defendant is a third-year medical student. Plaintiff sues for battery. What result? Why?

(b) Plaintiff then seeks out other medical advice. Defendant represents himself to be a doctor and treats plaintiff with her consent. In fact, unknown to defendant, his license to practice medicine is invalid. Upon suit for battery, what result? Why?

7. Plaintiff has on numerous occasions threatened to kill defendant. One night he encounters defendant on the street, and, reaching under his coat as if for a gun, shouts "Now you're gonna get it!" Defendant draws a pistol and shoots plaintiff, who was unarmed. Plaintiff sues. Is Defendant liable? Why?

8. Plaintiff, drunk, kicks in defendant's door and enters. Defendant, without any request that plaintiff leave, grabs plaintiff by the arm and shoves him toward the door. Plaintiff produces a knife and threatens defendant. Defendant fractures Plaintiff's skull with a poker. Judgment for whom? Why?

9. Ex-Boy Friend chases Defendant waving a gun and shouting threats. Defendant flees through the yard of A, trampling flowers and splintering lawn furniture. She then crosses the yard of B, doing no damage. Ex-Boy Friend then catches up to her and shoves her bodily into C's yard, where she crashes into C's chicken coop and squashes two dozen eggs. A, B, and C sue Defendant. What result? Why?

10. In a personal injury action the judge instructs the jury that "if you believe from the evidence that the defendant in good faith exercised his own best judgment as to what he should do under the circumstances, you shall find for the defendant." Was this a proper instruction? Explain.

11. Defendant, driving negligently, fails to see Pedestrian crossing the street until he is almost on him. Defendant then swerves violently in a desperate effort to avoid Pedestrian, but runs onto the curb and injures Plaintiff, who was waiting for a bus. Defendant claims that the jury should be instructed on the doctrine of sudden emergency. Is defendant entitled to the instruction?

12. Negligence action. Defendant, age 15, obtains his driver's license and promptly runs over Plaintiff. The judge instructs the jury that defendant is to be held to the standard of conduct "which it is reasonable to expect of children of like age, intelligence, and experience." Judgment for defendant. Plaintiff appeals. What result? Why?

13. Defendant drives at night with defective tires and no driver's license. While defendant is stopped in the middle of the road combing his hair, he is struck from the rear by plaintiff, who contends that the laws requiring driver's licenses and good tires are designed for the safety of users of the highway, and that defendant's violation of the laws constitutes negligence per se. Does it? Why?

14. Defendant's car leaves the highway at high speed, crashes into a tree, and catches fire. Defendant driver and plaintiff's intestate, a passenger, are killed. There are no eyewitnesses and Plaintiff can show only the above facts. Can Plaintiff get to the jury, in a state where there is no guest passenger statute? Explain.
15. Defendant makes a left turn without signalling. Plaintiff is busy talking to her passengers and doesn’t see defendant turning until she is only ten feet away. Contributory negligence is not a defense in this state. Can plaintiff recover for defendant’s negligence in failing to give the turn signal as required by law? Why?

16. A is burning leaves. The fire spreads to the nearby underbrush. Meanwhile, B tosses a lighted cigarette into the nearby woods. The two fires spread and unite into one huge fire which burns down Los Angeles. Plaintiff sues A & B. Can he recover against either, both, or neither? Why?

17. (a) Defendant power company allowed a power pole to become rotten. A disabled airplane crashed into the street, knocking the pole over on plaintiff. Defendant claims that the airplane crash was a superseding cause which relieves it of liability. What result? Why?

(b) Same facts, except that a high wind blows down the pole. What result? Why?

(c) Same facts, except that a drunk deliberately runs into the pole to see if it will break. What result? Why?

(d) Same facts, except that Plaintiff ran when she saw the airplane falling and ran into the path of the falling pole. What result? Why?

18. Plaintiff is injured by the concurrent negligence of three persons, A, B, and C.

(a) P sues A and recovers judgment. Are B and C released? Why?

(b) P sues A, B, and C. He gets judgment against all three. A pays the judgment. Are B and C released?

(c) P sues A and B. A pays one half of the judgment. Which of the three, A, B, and C, is/are released?

19. Plaintiff sues master and servant and recovers against both. Master pays the judgment in full. Can Master recover anything from servant? If so, what portion? If not, why not?

20. (a) Defendant hospital negligently gave Plaintiff the wrong baby. Plaintiff sues for severe mental distress, but fails to show physical injury. Can she recover?

(b) Defendant negligently runs over little Junior. Plaintiff mother looks out of her front window in time to see the bloody impact. She suffers a mental breakdown and a miscarriage. She sues defendant for mental distress. Result? Why?

21. There are three persons present when Plaintiff’s intestate falls into the water. Bystander A sits and watches, amused. Bystander B goes for help but stops to chat with a pretty girl and never gets aid. C, who negligently bumped the victim into the water to begin with, leaves the scene hurriedly, to avoid “getting involved.” Victim drowns. Plaintiff, the victim’s administrator, sues A, B, and C. Which, if any, might be held liable for failure to rescue the deceased?

22. Defendant practices archery on his property. An arrow goes astray and punctures Plaintiff, who wandered onto the property by accident. Defendant, hearing Plaintiff screaming in the bushes, thinks he is a deer, and, anxious to prove his virility, fires another arrow into the bush, again striking Plaintiff. Plaintiff emerges from the bushes with the arrows sticking in him. Defendant, annoyed that Plaintiff is not a deer, and ignoring the fact
that Plaintiff is in his line of fire, resumes shooting at the target.
A third arrow penetrates Plaintiff's hide. Is defendant liable for any of
these injuries? Which? Why?

23. Defendant's land has an abandoned gravel pit on it. Defendant knows about
it but gives no further thought to it. What would be Defendant's liability, if any, for injuries to:
   a. a social guest?
   b. An unseen trespasser (adult)?
   c. An unseen trespasser (child)?

24. Defendant owns a gift shop. Defendant is not aware of any defects but has
not looked for any. Customer A is injured by old, loose plaster falling on
him in the main showroom. Customer B is invited into the stock room to
look at some newly arrived merchandise and suffers the same fate. Customer
C gets permission to use a toilet normally reserved for employees only,
and is also hit by falling plaster. Customer D, having also had special
permission to use the toilet, is curious to see the stock room and sneaks
in for a quick look, where he is also "plastered." To whom is defendant
liable?

25. A leases an apartment in his new, swanky high-rise apartment building to B.
A agrees to repair the apartment whenever defective conditions are found.
A social guest of B, on his way up the steps to B's floor, falls on a step
which is in need of repairs. B has told A about the step, but A has failed
to repair it. The defect was obvious, and B knew about it when he moved
in. Guest sues A, claiming that A has an obligation to keep the step
repaired. What result? Why?

26. Plaintiff negligently runs out of gas in the middle of the street.
Defendant sees him stalled there in time to stop but, angry, makes no effort
to avoid hitting him. The two cars collide. Plaintiff is injured.
Defendant alleges contributory negligence. Plaintiff admits his own
negligence but demands an instruction on last clear chance. Should the
judge give this instruction?