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TORTS IIB

Mr. Friend

May 22, 1972

1. After a long day at the Skunk Works, Fred Flunky an employee, and Rich Mann, owner of the factory, get soused together at a local bar. As their intoxication approaches a climax, Mann gives Flunky the keys to Mann's car and orders him to go back to the factory to get a briefcase for Mann. On the way, Flunky drives Mann's car over a curb and into a crowd of people, injuring several. The injured persons sue Mann.

a. Is Mann liable? Why or why not?

b. Would it matter if it is shown conclusively that Flunky was not acting within the scope of his employment?

2a. The Very Expensive Polluting Company is constructing a large nuclear power plant in Sorry, Virginia, when an accident occurs. Eighteen counties are affected by the fallout, and numerous lawsuits are filed. The company shows conclusively that there was no negligence on its part. Can actions be maintained against it? On what theory?

b. Shortly before the aforementioned disaster, Polluting Company had roped off the area and posted warning signs and guards to keep people away from the area of the anticipated explosion. One plaintiff, a news photographer for the Daily Mess, slipped past the guards to get some close-ups of the expected blast and was injured by flying shrapnel. Can he recover? Why?

3. Defendant blocks a public highway with a log barricade. Plaintiff must pass along the road to reach his place of work each morning, as there is no other route. What form or forms of action might be available to plaintiff to obtain redress? Explain.

4. Plaintiff, George W. Neck, known as "Red," purchased a Remmchester 672 autoloading rifle to assist him in his manly hobby of killing deer and other harmless animals. On the second shot, the rifle exploded, causing Red thereafter to be known as "Lefty." Neck seeks your advice as to possible recovery from the manufacturer of the rifle. What theories of recovery might be available to Neck? What will you have to prove to recover under each theory?

5a. Plaintiff purchased a used car from Slovenly Sam, the King of Kars. Prior to the sale, Sam, noting water leaking from the radiator, plugged the leak with chewing gum. When plaintiff purchased the car, plaintiff did not ask any questions about the condition of the cooling system, and Sam did not volunteer any information. Plaintiff drove the car away one block from the lot, the plug came out, the car overheated, and the engine was ruined. Any cause of action? Explain.

b. Suppose that, upon trial of the foregoing case, it is shown conclusively that an ordinary prudent man would have examined the radiator before buying the car, and hence would have observed the leak. What effect on the outcome?

6. Define:

- (a) Slander per se, and
- (b) Libel per se.

7. Defendant calls Plaintiff a prostitute in the presence of four witnesses. Witness #1 testifies that he thought Defendant said that Plaintiff was a protestant. Witness #2 testifies that he was too far away to hear what was said. Witness #3 is a child of three years. Witness #4 just got off the boat from Lower Slobbovia and speaks no English. On suit for slander, what result? Why?

8. William Kookler, noted radical attorney, visits Williamsburg to make a speech commemorating "Hate Everything" week. While in town, he appears as counsel in the local court, defending one Harry "Bathless" Hirstute, who is charged with blowing up the corner delly. In his final argument, the Commonwealth's attorney tells the jury that Kookler is a dangerous, megalomaniac demagogue whose sole interest in defending "liberal" causes is to stir up trouble and make headlines for himself, and is, therefore, unworthy of the jury's belief or trust. Kookler's objection is overruled by the judge, who comments that Kookler's mother probably barked as loud as Kookler does. Kookler sues both judge and prosecutor for defamation. What defenses might be available to the defendants?

9. The Toano "Bird Watcher's Monthly," a newsletter published for members of the local branch of the Audubon Society, reports that plaintiff, an erstwhile member of the club, was using club outings solely to scout out nesting places of the rare "Toano Titmouse," so that he can illegally kill the birds later and sell their feathers. The story is picked up by the Williamsburg Gazette, a weekly newspaper, which prints the full details. Unknown to either paper, the story is false. Plaintiff sues both publications for libel. What result? Why?

10. Name the four types of invasion of privacy, and give a brief example of each.

11. J. P. "Bull" Sluggem, Chief of the Mississippi State Police, sues the publishers of the Daily Whine, New York's leading newspaper, for printing a story to the effect that Sluggem skins civil rights workers and uses their hides for lampshades. "Bull" sues for libel. What must be shown in order to recover?

12. Miss Charity Goodbody, angry with her next door neighbor, Joe Modpants, because he has long hair and reads dirty books, falsely swears out a warrant against him for child molestation, hoping to get him out of the neighborhood. Modpants, being innocent of the charge, is acquitted at his trial. He now wishes to sue Miss Goodbody.

a. What tort has Miss Goodbody possibly committed?

b. What elements must be shown to maintain the action?

13. The Gigantic International Consolidated Food Industries organization opens a supermarket in the same block as the small grocery operated by lovable old Uncle Jimmy Smallbiz. Gigantic then:

a. induces Uncle Jimmy's assistant, Zeke, to quit his job with Uncle Jimmy and go to work for Gigantic, even though Zeke had agreed to work with Uncle Jimmy until the end of the year;

b. induces the local dairy farmers, who have been selling milk and butter to Uncle Jimmy on an informal basis, to

sell all of their produce to Gigantic; and

c. cuts its prices so low that Uncle Jimmy goes broke and closes up, after which Gigantic triples its prices.

Does Uncle Jimmy have a cause of action for any of the foregoing? Which and why?

14a. List at least five kinds of compensatory damages.

b. What other types of damages may be available besides compensatory damages?

15. Old Simon McMiser is killed when his nephew Waldo Worthless, driving a Stutz Bearcat in which Simon is a passenger, collides with a milk wagon. In a suit against the dairy for the wrongful death of Simon, the dairy company proves that, although their driver was negligent, Waldo was also negligent in his operation of the motorcar. If Waldo is the sole beneficiary of Simon's will, does his contributory negligence prevent recovery? Why?