Torts II (Section B) (May 25, 1973)

William & Mary Law School
1.

Mr. Harry Brute, a tough ex-gangster wishing "to go legit", purchased a small company that made a very popular doll, "Jungle Bill". The seller, Ms. Vera Sharp, had stated in negotiations that, "I've been in this doll business for years and I can tell you this doll is going to be an everlasting gold mine. It's the finest constructed doll on the market." Actually, Ms. Sharp knew that the most recent, and still unpublished, sales figures showed a sharp decline in sales, suggesting that the market demand for the doll had passed its high point. Also, an impartial appraisal would have concluded that there were at least two other dolls on the market that clearly were better constructed. Harry replied to Ms. Sharp's assertion by stating: "Lady, this is your turf; you ought to know what you're talking about, and these published sales figures back you up." Harry bought the company and Ms. Sharp immediately used the purchase money to set up a new company in the same city and started making a new doll, "Jungle Jill" (advertised as "a good mate for your child's old friend, Jungle Bill"). Also, she induced Mr. Plasticsman, the supplier of an especially fine grade of plastic to her old company, to cease supplying to Harry and others and to provide her with his entire output.

When Harry saw his new business quickly start operating at a loss and learned of Ms. Sharp's great success with "Jungle Jill", he went one morning to her new plant and stood before her office door as she attempted to enter. Harry stated: "Lady, you're out of business as of now. I'll buy you out fair and square, but try to enter this office or this plant again, and you'll get a knuckle facial (shaking his fist at her)." Ms. Sharp replied, "Get out of my way!", and started to pass, but stumbled and Harry quickly steadied her, stating with a mocking expression, "Easy, honey, you might hurt yourself." Angrily, Ms. Sharp shook off his arm and demanded that Harry leave. Harry replied, "Okay, guess the want to get down with, with a grin, started toward the exit. Ms. Sharp replied, "I'll be calling the police on you!" And for the first time in her life, she purrs a can of "Handy Mugger Repellant", quickly sprayed it in Harry's face. In tears and some pain, Harry lurched forward, saying, "You've blinded me! If I get you, you're going to the cops!" He grabbed Ms. Sharp's arm, but she jerked loose, and backing away from his continued advance, she fell over a railing. The fall injured her severely, and she soon afterward suffered severe emotional disturbance that she claims resulted from Harry's conduct.

Ms. Sharp retains you for legal advice. Discuss possible prima facie causes of action against Harry for intentional torts and whether Harry appears to have any valid defenses. Also, on the basis of the facts stated, advise Ms. Sharp whether Harry has any possible causes of action for misrepresentation, unfair competition, or battery, and whether she appears to have any valid defenses.

II.

Purist, a lawyer practicing in the town of Middle America, resided on a ten-acre site ten miles outside of Middle America. The site had once been a farm. Purist operated 6 acres as a part-time farmer, and used the remaining four acres for his residence. The area in which he lived contained a number of farmsman approximately equal number of residential properties occupied by persons working in Middle America and other nearby small cities, and the Toxic Cement Co., hereinafter referred to as "Toxic". Toxic operated a plant valued at $50,000,000 and employed 250 people. Shelly without discrimination, its plant belched "particles, particulates, solids and gases" into the air and upon the farms and residences of farmers, part-time farmers and home owners alike. Purist had bought his property seven years prior to the commencement of the lawsuit referred to below. Toxic had been in operation at the time of Purist's purchase, but its volume of business and rate of operation had increased steadily throughout the seven-year period. A year ago, after one of his trusses had died and the paint on his house and his leased automobile had been damaged, Purist wrote to the manager of Toxic and demanded that it "cease its interference with my property rights," Toxic's manager replied by return letter to the effect that Toxic was very sorry, but, "despite the most modern techniques and equipment," Toxic could not prevent the effects of which Purist complained. The letter went on to say that Toxic would, however, keep trying to remedy the situation, since Toxic, "which is so necessary to the economy of the area," wished to be "in all ways a good neighbor."

Recently, after Purist discovered that he had a serious lung condition caused by breathing the particulates and gases expelled by Toxic, he filed suit on his own property. Because Purist is strictly a tax lawyer, he was told not to sue him as a matter of nuisance seeking for damages and an injunction against Toxic continuing to cause "particles, particulates, solids and gases" to enter his property. Since Purist is strictly a tax lawyer, he was told not to sue him as a matter of nuisance seeking for damages and an injunction against Toxic continuing to cause "particles, particulates, solids and gases" to enter his property. Since Purist is strictly a tax lawyer, he was told not to sue him as a matter of nuisance seeking for damages and an injunction against Toxic continuing to cause "particles, particulates, solids and gases" to enter his property.

Prof. Williams
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III.

Mr. Casey A.T. Thebat sues the Mudville Meander, Inc., which is a newspaper corporation, and a sports columnist, Mr. Gadfly, for libel and violation of rights of privacy. An article written by Gadfly and published in the Meander contained the following passage:

"Mudville baseball fans have been disturbed by reports of the unsavory associations of our hardest slugging outfielder, who as an off-season deputy sheriff, knows how to swing a billy club as well as a bat and ought to put his training to use against some of the characters seen in his company recently. Also, as one who once was in trouble with the law, he should be extra careful."

Casey felt that baseball fans generally would understand the above statement to refer to him and to accuse him of consorting with gamblers interested in "fixing" professional baseball games; that the accusation is false, and that his reputation has been seriously impaired. Casey demanded a retraction and it was refused. The Meander's owner stated he saw nothing defaming about the column. Also, Casey was incensed at the reference to his one and only prior "trouble with the law," which was a conviction seven years ago for assault and battery upon Gadfly. (There has been enmity between them for years.)

After filing his lawsuit, and in the course of a deposition proceeding attended by Casey, the Meander's owner, Gadfly, each party's attorney and the court reporter taking the deposition of Gadfly, Casey hears Gadfly state that a Mr. Hiram Bussybody had telephoned him and said he had seen Casey in continuous company with Harry the Corsican, a well-known gambler, at Las Vegas. Gadfly had not had any past dealings with Mr. Bussybody, and made no checks on the accuracy of this assertion. In truth, Casey had visited Las Vegas with a good friend who resembled Harry the Corsican only vaguely. When Gadfly-related Bussybody's statement, Casey jumped up in a rage and shouted, "You've blasted me in your filthy rag on a completely unverified, false statement! There's more truth in Mad Comics than there is in that garbage page liner you call a newspaper!" The court reporter present informed another newspaper about this little tidbit in the deposition record and that newspaper plagiarized it. Moreover, Meander files suit against Casey for slander and libel.

You are the trial court judge for these companion cases. Prepare a rough draft of your judgment analyzing the validity of the causes of action sued upon and discussing whether any valid defenses appear to be present for each cause of action.

IV.

Virginia State Senator, Joseph Radicals, has submitted the following bill for what is, in his view, "a real, bare-knuckled, consumer-oriented, no-fault insurance plan". You may elect your role in drafting a comment upon the bill. You may be either (a) a lawyer retained by a lobby group that wishes to defeat this and any other form of no-fault insurance, or (b) a lawyer assisting Senator Radicals in making a persuasive argument for his bill. In either case, you will, of course, wish to relate your comments not only to such questions as costs and administration raised by the proposal, but also, the benefits/detriment for the persons concerned, and for society in general, that result from the operation of the present tort system in dealing with automobile accidents:

A. Senator Radicals's plan provides, first, for the following benefits to be paid by the policyholder's own insurance company:

1. All costs of medical, hospital, surgical, and nursing services appropriately and necessarily incurred.
2. All rehabilitation expenses, such as psychiatric, physical and occupational rehabilitation, appropriately and necessarily incurred.
3. All lost after-income-tax earnings for the period during which the victim is unable to work as a result of the automobile injury, including lost earnings anticipated or those that could be reasonably expected, up to $2,000 a month.
4. All appropriately and necessarily incurred expenses for services the victim would have performed for self or family, but for the accident and injury.
5. All funeral expenses appropriately and necessarily incurred.
6. All attorney's fees and court costs incurred in actually collecting benefits.
7. An amount equal to the damage or loss to property incurred plus the rental cost of a substitute vehicle pending repair (less optional deductibles).
B. Secondly, the buyer is protected in various ways. Here are some of them:

1. The insurance buyer cannot be sued for damages unless the owner, operator or user of the automobile was engaged in criminal conduct at the time of the accident.
2. Insurers can refuse to insure only if the applicant lacks or loses a valid driver's license or fails to pay the premium.
3. Amounts unpaid 30 days after the insurer receives reasonable proof of loss bear interest at the rate of three percent a month (36 percent a year) on the unpaid balance.
4. The insurer must gather and publish complete price and claim-payment information in much the same manner that truth-in-lending legislation requires information on the true cost of credit.

C. Thirdly, the bill provides additionally that:

1. Subrogation either by lawsuit or arbitration would be disallowed.
2. The accident victim, if he does not have automobile insurance (i.e., a pedestrian), shall recover non-pecuniary "general damages", for example, for pain and suffering or for inconvenience, from the company insuring the driver who struck him; in all other cases, the victim may recover such losses if he buys an optional "pain and suffering" rider on his automobile insurance policy.

END OF EXAMINATION