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T. C. Williams School of Law, University of Richmond: Torts II Exam, 23 May 1932

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T. C. WILLIAMS SCHOOL OF LAW
University of Richmond

Torts II Examination

May 23, 1932.

Discuss fully each point raised whether it has any bearing on outcome of case or not. Give reason or reasons for holding.

1. A leases a building to B. The lease contains a covenant binding the landlord to make both external and internal repairs. During the possession of the tenant, B, a slight fire injures the wall which abuts upon a public highway. The tenant, B, notifies A to repair. A fails to do so. In consequence the wall collapses injuring B, who is a traveler upon the adjacent highway, and Y who is a social guest of B sitting in the front room. What are the rights of the parties? Discuss fully.

2-3. The X Company owns an old and abandoned factory situated on a large tract of unfenced land. For some time children, to the knowledge of the Company, have been in the habit of playing on the land which is close to the abandoned factory, and the employees of the X Company have on several occasions driven the children out of the building, the door of which had fallen off its hinges.

The X Company had left in the old factory an obsolete punching machine operated by a foot pedal. Bertha Jones, 7 yrs. old, without any negligence on the part of her mother, leaves her home and walks into the street. From the street Bertha hears the noise of children playing on the X Company's land. Attracted by this, she, for the first time in her life, enters the X Company's premises. She sees two children of nine and ten years going into the door of the old factory and follows them. These children see the punching machine and start playing with it as a result of which Bertha's hand is pierced by the machine. The other children run into the street screaming, "Bertha is killed." At this moment, Mrs. Smith, whose little daughter ~~X~~ was also named Bertha and was ~~X~~ to her mother's knowledge, in the habit of playing on the premises of the old factory, believing that it was her daughter Bertha who had been, as the children said, killed, Mrs. Smith suffers a nervous shock which, in conjunction with a disease of her heart, causes her death. What are the rights and liabilities of the parties? Discuss fully.

4-5. A, while driving carefully along a mountain road, is forced over an embankment by the careless driving of B. A's car is caught in some small saplings, about 20 feet down the bank and is likely to fall and be destroyed at any moment. A climbs out uninjured. B has driven on without attempting to give any assistance and without waiting to see whether A succeeds in getting out of the car without injury. A hails C and D who are driving a truck along the road. C and D volunteer to aid A in raising the car by attaching ropes to the front and rear of the car. C ties one of the ropes to the truck, A and D holding the other. When the car is pulled half way up the hill C operates the truck so carelessly as to let the rope attached to it go slack, although warned by A and D to keep it taut. In consequence of C's carelessness all the weight of the car is suddenly thrown upon the rope held by A and D, dragging them down the bank before they had time to let go of the rope. Both A and D suffer serious injuries. What are the rights and liabilities of the respective parties? Would it affect your answer if A was driving carelessly, or if B was driving with no license plates?

6-7. B operating in a western oil field in May, 1931, capped his well as required by statute of that particular state. The gas then escaped through fissures in the surrounding earth, causing a crater to form at the bed of a small stream of water 1000 ft. away from the well, on the land of X, separated from the defendant's land by a railroad's right of way. The crater exploded in June, 1931, throwing large quantities of mud and water and gas about 15 ft. into the air. Crowds of people gathered along the track to witness the phenomenon, and among them was A, who was standing on X's land when a man in the crowd struck a match to light his pipe. The fire flashed to the crater and A and others were burned to death. A's personal representative seeks to recover damages for A's wrongful death. What judgment? Why?

8. Kingfish while driving his car carefully along the highway runs into and injures Amos. Kingfish though knowing he had knocked Amos down fails to stop. Andy is walking along the road and finds Amos bleeding profusely and in need of immediate medical and surgical attention. Seeing the car of Bullneck parked some 100 yards away, Andy goes to it, gets in, and starts to drive to Amos with the intention of taking Amos to the Rescue-Hospital, half a mile away. In order to start the car he has to break the device which locks the gears thereby doing considerable damage to the car. Bullneck suddenly appears and objects to Andy taking his car although Andy informs him of the purpose for which he desires it and Bullneck believes the statement. A struggle ensues in which Andy is injured. Bullneck ejects Andy from the car and drives it away without attempting to aid Amos who lies all night in the road. The consequence being that Amos's injury, which had it been promptly cared for would have been insignificant, requires the amputation of his leg. The following suits are brought: (1) Amos vs. Kingfish, (2) Amos vs. Bullneck, (3) Andy vs. Bullneck, (4) Bullneck vs. Andy. What judgment in each? Why?

9. B, in selling a horse to X, asserts (1) That the horse is 7 yrs. old, (2) That the horse is worth \$500, (3) That he, B, paid \$500 for him, (4) That the horse had trotted a mile in 2:28. Induced by these statements, X buys the horse for \$400.

(1) B knows the horse is 14 yrs. old. (2) B does not believe the horse is worth \$500 but believes he is worth \$400. (3) B knows he only paid \$200 for the horse. (4) B does not believe that the horse has yet trotted a mile in 2:28. The horse has never trotted in that time but B mistakenly believes that he can do so. In fact the horse is only worth \$200. X sues B for fraud and deceit. State, as to each of the above assertions, whether an action can be maintained upon it. Give reasons in each case.

10. Grounds for attachment in Virginia are statutory. A, having no knowledge of law, and the only attorney being absent from the county, sued ~~an~~ out an attachment by virtue of which the constable attached B's truck which was being used daily in hauling lumber. 5 days after the attachment, and before trial, B pays the debt due A for gasoline furnished for use in his trucks and the cost of the proceedings whereupon the attachment was dismissed. B later learns that no grounds for attachment existed and sued A for malicious prosecution. B did not deny the indebtedness but claimed the reason he did not pay the bills was they were not presented. A had repeatedly sent bills by the truck drivers but they had not reached B. What judgment? Assuming a good cause of action existed, what elements should be taken into consideration in fixing the damages?