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T. C. Williams School of Law, University of Richmond: Torts II Exam, 28 Jul 1934

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T. C. WILLIAMS SCHOOL OF LAW
University of Richmond

TORTS II Examination

July 28, 1934.

1. At a busy intersection two motorists, Austin and Buick, both driving negligently, collided. Austin was thrown senseless into the street. Buick was badly shaken up but not otherwise hurt. Buick's guest, Cherry, was also thrown out and rendered helpless by a broken leg. Dodge, driving a bus, could have seen the collision in time to stop, but his attention was momentarily diverted by some incident on the sidewalk. When he did observe the effect of the collision it was too late to avoid running over the men. In the latter accident Austin received a broken leg, Cherry was killed, and Buick, who at the time was endeavoring to drag Cherry to the sidewalk, also received injuries. Discuss the tort liability of the several parties.
2. Barney, while driving an unregistered automobile at an excessive rate of speed (no speed statute existing) was injured because of a defect in the streets of Santa City resulting from the negligent manner in which the city had constructed certain culverts beneath the street. Barney was promptly taken to a hospital where he submitted to an operation but refused to take an anaesthetic. Barney became seriously ill from surgical shock to which the lack of anaesthetic largely contributed. The hospital caught fire, Barney suffered severe burns ascribable in part to the careless manner in which his rescue was effected by Hasty, a volunteer rescuer. What causes of action in tort, if any, are available to Barney?
3. Early one morning Arnold started to tear down an old barn situated on Arnold's land close to the land of Black. Arnold forgot that he had previously told Coon that he might sleep in his barn whenever he cared to do so. Although Arnold had reason to know that tramps occasionally slept in the barn, he made no investigation to discover whether any person was in the barn. Arnold used all reasonable precaution to keep the barn from falling on Black's land, but a sudden gust of wind caused the barn to collapse and in falling to injure Black's house. The fall also injured Coon and Dole, a tramp, who was asleep in the barn at the time. Black, Coon, and Dole severally sue Arnold. What decision in each case?
4. Nichols had a contractor, Brown, install in his home a hot air heating system, pursuant to specifications furnished by Clark, a consulting engineer, who represented to Nichols that a certain insulating material sold under a trade name was a suitable fireproof covering for the specified sheet metal hot air ducts. Due to the negligence of the contractor there was a defect in the piping connections and a spark set fire to the insulating material, burning down the house of Nichols and personal property of Ryder, a boarder therein. The manufacturer of the insulating material advertised and represented that such a material was a suitable covering for similar hot air ducts, upon which representation Clark relied in specifying this material in the specifications submitted to Nichols. Discuss the liability of the contractor, engineer, and manufacturer. (Cf. Nichols v. Clark, 261 N.Y. 118.)
5. Engine failure caused the defendant's aeroplane, descending in the dark, to strike and damage the plaintiff's tower. The plaintiff sued for negligence. Hold: The doctrine of res ipsa loquitur does not apply since planes frequently fall for unpreventable causes. Damage caused without fault should, however, be borne by the one creating the risk; hence there is no question for the jury and judgment should be for the plaintiff. (Rochester Gas and Electric Corp. v. Dunlop, 266 N.Y.S. 469) Comment on the holding. Comment on the policy of such a holding.

6. A maliciously tells B that plaintiff, the treasurer of the X Corporation, is gambling heavy, spending money lavishly, and maintaining a mistress in an expensive apartment. B had been a stockholder in X Corporation but unknown to him his stock had been sold by his duly authorized agent. Thinking himself to be still a stockholder, B, giving A as his authority, repeats the remarks to C, whom B erroneously believes to be a stockholder in the same corporation. What is the liability of A and B to the plaintiff.

7. A gave a note with power of attorney to confess judgment, to X who assigned to B. A paid to B personally the amount of the note before maturity. The note not having been returned or cancelled the average reasonable person would have thought it unpaid. On maturity B got a judgment by confession and levied on A's property. Thereupon A asked the court to set aside the judgment, and a hearing was granted for that purpose, but instead of proceeding to a hearing the parties agreed that B should mark the judgment satisfied. This was done. A now sues B for malicious prosecution. What result? (Cf. *Sheido v. Home Credit Co.* 162 Atl. 321 and *Henning v. Miller*, 8 P (2d) 825).

8. State very concisely the holding in *Derry v. Peek*.

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