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T. C. WILLIAMS SCHOOL OF LAW
University of Richmond

TORTS II Examination

May 30, 1935.

1. Defendant manufactures and sells its product known in the trade as "Eskimo Pie" to dealers to whom it also furnishes a small cake of dry ice, in a paper bag, for refrigeration. In replenishing a dealer's supply one morning, Defendant took the bag containing the dry ice which was left the previous day and threw it into the street. The bag contained a small block of unevaporated dry ice about one-half inch square. Plaintiff, age 6, and other children were playing nearby and saw "smoke" coming from the mouth of the bag. After removing the ice from the bag and playing with it for a time, Plaintiff put it into a citrate of magnesia bottle, partly filled with water, and clamped the lever top down and began to shake it. About then Plaintiff's sister, age 15, saw Plaintiff and, remembering that he had been cautioned against playing with bottles, ordered him to throw it away. He did not obey, and the sister came from the house and forcibly took the bottle which exploded in her hands seriously injuring Plaintiff and her. Is Defendant liable to Plaintiff and his sister? (N.B. "Dry ice" is CO_2 in solid form. At ordinary temperatures, CO_2 is in gaseous state, but by applying pressure, it may be liquified and in turn solidified. At normal temperatures, dry ice changes from solid to gas, and increasingly so when placed in water and agitated. In transition from solid to gas, its volume increases 500 times.)
New York Eskimo Pie Corp. v. Rataj et al., 73 F. (2d) 184 (1934).

2. Fisher borrowed Hunter's dog for a hunting trip. He fed it food purchased from X. X had previously sold to Fisher dog food containing broken glass, by the eating of which Fisher's dogs were killed. Had Fisher examined the food which he fed Hunter's dog, he would have discovered therein small capsules of high explosives. The dog eating the uninspected food, exploded the capsules. The dog was killed and fragments of the dog-house scattered by the explosion. One such fragment struck Hunter in the eye while he was playing golf on a course some 200 yards from Fisher's premises. Hunter brought action against Fisher for the loss of the dog and for his personal injury. What result?

3. A statute of X imposes a \$ 25 fine for operating upon the highways of that state an automobile not equipped with safety glass. A was operating his car in violation of the statute when he offered a ride to B, a hitch hiker, without informing B that the car was not equipped with safety glass, the lack of which was not apparent to B. In going up grade behind a slowly moving large truck, A followed with the left wheels about two feet to the left of the center line of the road. By this time B, being tired from walking, had fallen to sleep. When the truck driver had reached the "rise" and could see the straight road ahead for 500 yards, he, without looking ahead, motioned A whom he could see in his rear-view mirror to pass. A, not being able to see more than 50 feet ahead and relying on the truck driver that no one was approaching from the opposite direction, attempted to pass the truck and collided with an approaching car being carefully operated by C. The two cars were damaged and B and C received minor cuts by flying glass from A's windshield. B's cut, at first, seemed superficial, but several days later it became infected. B then consulted a physician who mistakenly applied to the wound acid instead of an antiseptic as a result of which B suffered serious physical consequences. B and C severally sued A. What judgment in each? How, if at all, would your answer be altered were there no statute? In action by A against truck driver - what result?

4. Electric Co. supplies electric current for domestic and commercial use to the inhabitants of the city of Westville and for that purpose maintains highly charged wires over a river. The wires are attached to insulated arms about three feet long extending from the side^{of} and attached to a public bridge. To the company's knowledge children customarily play upon the broad side rail of the bridge and frequently swing out on the arms supporting the wires and in doing so are likely to come in contact with the live wires. In spite of this the wires are insulated for weather protection but not against contact. Henry Post, a small boy, who was sitting upon the side rail, lost his balance and was about to plunge to rocks 50 feet below when he instinctively grasped the wires and was electrified. This contact caused an instrument at the power plant, located at one end of the bridge, to indicate trouble. The employee in charge at the time intended to shut off the current but instead negligently threw the wrong switch and increased the current. This sudden increase of current caused the dynamo in Parker's factory, located at the other end of the bridge, to increase in speed which destroyed a pulley at the other end of a short belt; the destruction of the pulley disturbed the main shaft which in turn disconnected the governor; the disconnection of the governor caused the dynamo to race and turn the fly wheel so rapidly that a piece of it flew off damaging Parker's building. In separate actions by Post and Parker against Electric Co., what result in each? See *Lynn Gas etc. v. Moriden etc.*, 33 N. E. 690 (1893) and *Dillon v. Twin State etc.* 163 A. 111 (1932).

5. Du Pont Co. manufactures and markets a patented product known as "Semesan", a poisonous compound with a mercury base, and so labeled, which it advertises as a seed disinfectant. The Company recommends its use for the treatment of seeds, roots, and bulbs before planting to eradicate certain diseases to which they are subject. Baridon, a grower of, and dealer in, gladiolus bulbs, had heard a Du Pont salesman recommend "Semesan" for treatment of gladiolus bulbs and was familiar with the Company's sales literature advocating such use. Baridon purchased from Crew, a local dealer, 30 units of "Semesan" and also procured from Crew pamphlets issued by the company which gave directions as to the strength of the solution to be used and the length of time the bulbs should be immersed in order to secure the best results. Baridon followed the directions but all bulbs so treated died about two weeks after planting as the result of the use of the solution which had been negligently manufactured. At about the same time Mrs. Baridon, without her husband's knowledge and contrary to his definite instructions, used some of his "Semesan" on her flower bulbs planted about the lawn which also died from the same cause. What, if any, and against whom, are the rights of Baridon and Mrs. Baridon? *E. T. Du Pont etc. Co. v. Baridon*, 73 F. (2d) 26(1934).

Assume that Baridon has a right of action against Du Pont. Baridon proves at trial that he relied on the literature and representation of Du Pont; the directions were followed to the letter; and the solution caused the bulbs to die. No other evidence is offered. Under proper instructions, should Baridon recover?

6. Duff, the owner of an apartment house, negligently left the door of an elevator therein open and unlocked. Puff and her children were calling on a tenant on the sixth floor of the house. In going from the tenant's apartment the children preceded Puff around a corner in the hallway toward the elevator and without fault on the part of Puff the children entered the elevator and set it in motion. Puff, seeing the open elevator shaft and thinking her children had fallen therein was much frightened. Her fright subsided somewhat upon seeing the children descend in the elevator past the sixth floor, but still had fear for their safety. The children were not harmed in any way, but Puff suffered severe physical injury which she can prove was a direct result of the fright or the fear. Has Puff any action against Duff for her injuries?

7. In the night time A and B were driving, at a proper rate of speed, their respective automobiles in the same direction along a public highway. B, whose lights were out of order and therefore not burning, was trailing A and was about 50 feet back of A's car. Although he had traveled the highway at night a number of times before, A failed to remember an unmarked bridge abutment and drove his car into it. The collision threw A, unconscious, upon the paved portion of the highway and the car down a 30 ft. embankment. When this happened, had B done all possible to bring his car to a stop before reaching A he could not have done so. B could have easily avoided running over A by turning to the left and running over C's rail fence, but, not being aware that A was in the path of his car, ran over A and broke both of his legs. B, reasonably thinking he had killed A, did not stop to render assistance. A few minutes later D was passing in an ambulance and through curiosity, stopped at the scene of the accident. D placed a tourniquet on each leg above the break and proceeded on his way. E drove past the scene during the time D was there and would have stopped and taken A to the hospital but thought D would do so. A was allowed to remain in the road all night and bleed to death. Had A been taken to the hospital within two hours after the accident, his life would have been saved. What, if any, and against whom, are the rights of A's personal representative? In the action against B, would it affect your answer if B's lights were burning but he was unable to stop because of bad brakes of which he had knowledge before starting on the trip?

8. Lindy and wife, for pleasure, proposed to circle the globe in Lindy's aeroplane. The loading of the plane was under the sole control of Lindy. Each was to take turns at the controls. On the hop-off from New York with Lindy at the controls, the plane, due to being negligently overloaded, failed to rise and collided with a horse and wagon which was at the time being driven across the runway by Stone, an employee of the airport, who is totally deaf. Stone, when his horse and wagon was hit by the aeroplane, was busily engaged in packing down grass in the body of the wagon and not looking about. In the collision Lindy's wife was killed. She left surviving her Lindy and a minor child. The child was not in the plane at the time of the collision. Under a wrongful death statute similar to Lord Campbell's Act, Lindy as administrator brings action against Stone for the benefit of himself and the minor child for the death of his wife. What result? Suppose the collision had resulted in injury instead of death to Lindy's wife, could she have recovered from Stone?

9. B is manager in charge of A's business. A, honestly but negligently relying upon the reports of B, gave a financial statement to Bradstreet's showing net assets of \$ 150,000. In fact the net assets were \$ 50,000. In reliance upon Bradstreet's rating which was based upon A's statement, C sold to A \$ 50,000 worth of goods. B converted all the business assets into cash and absconded. What tort action, if any, has C against A?

10. Plaintiff seeks to recover damages for injury sustained from defendant's publication in the Omaha Bee-News the following:

(See next page)

"Reveal Cannon's Romance before Death
of Wife.

"Introduced Self to Widow in Hotel Lobby;
Wed at London.

"An informal meeting in the lobby of the Hotel McAlpin, two years ago, was disclosed Monday as the romantic episode that led to the marriage of Bishop James Cannon, Jr., and Mrs. Helen Hawley McCallum, New York widow.

* * * * *

"Mrs. McCallum was walking through the lobby with a woman friend. As she stood talking to her friend, the churchman, with disarming directness, approached and addressed himself to her saying:

"'Is it raining out?'

"It was raining indeed. The Bishop had a car. Would the ladies ride? So the Bishop drove them to Mrs. McCallum's cozy home.

* * * * *

"Their friendship was temporarily interrupted one night when Bishop Cannon, in Mrs. McCallum's apartment, received word of the serious illness of his wife, the former Laura Virginia Bennett, of Louisa, Virginia. The Bishop rushed to her bedside. She died.

"A few days after the funeral Bishop Cannon returned to the McCallum apartment to receive the sympathetic condolences of the widow. The visits continued."

The article then stated, in substance, that the widow became Cannon's secretary and toured the Holy Land with him and that later while touring England they were married. The defendant filed a general demurrer. What decision? Cannon v. Bee-News Pub. Co. et al., 8 F. Supp. 154 (1933).