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T. C. WILLIAMS SCHOOL OF LAW
University of Richmond

TORTS II Examination

May 26, 1936.

Professor Muse

1. A, the attendant at a gasoline filling station, in filling the tank of B's model-T Ford car, in B's absence, splashes gasoline over the cushions. B starts without knowing this, and a few moments later the cushions catch fire from a spark dropped from his pipe. B smothers the fire, as he supposes, and drives his car into C's garage. While in the office there, the fire, which was not in fact out, blazes up, destroys B's car, C's garage, and the neighboring building of D. What, if any, is the liability of A and B?

2. An ordinance of the city of X requires, under penalty of \$ 10 fine, that all persons transporting explosives by truck shall display a large placard with the word "Explosives" on the rear of the truck. A was transporting a load of nitroglycerine in his truck through the city of X without having placed such a sign on his truck. Although (in other respects) A was driving in a careful manner, he was just about to run down P, an elderly lame man, hobbling across the street, when the negligently driven automobile of B collided head-on with A's truck and diverted its course so that it did not strike P, as otherwise it would have done. The collision caused the nitroglycerine in A's truck to explode and the force of the explosion knocked P down, causing him severe injuries. P was taken to a hospital and while there was further injured by a nurse negligently dropping some hot soup in his eye. Discuss the liability to P of A and B, assuming that A and B survived the explosion.

3. A woman and her little daughter were passengers in defendant's street car. When the car reached the intersection of another street along which ran a cable car line, the motorman negligently attempted to cross, and did cross the cable line in front of a rapidly approaching cable train. A collision seemed so imminent and was so nearly caused that the passengers in a panic tried to stampede out of the car. The daughter was crushed in the jam and shortly thereafter died in the hospital. The mother, partly from shock suffered at the time of the stampede and partly from grief at the death of her daughter, became hopelessly insane and killed herself while in that condition. Discuss the liability of the defendant.

4. P stalled his truck on a grade crossing at night, where it was struck by D's train 15 minutes later. In a suit by P against D for damages to the truck, the trial judge charged the jury that P could not recover unless D's engineer was negligent in the operation of the train. D's attorney requested the judge to charge further that "if the jury find that P was negligent in driving upon the track and stalling his truck on the crossing, there can be no recovery". The judge then stated to the jury, "I think I will refuse to charge this because even if P was guilty of contributory negligence, yet if the engineer of the train in the exercise of reasonable care could have avoided hitting the truck, it was his duty to do so. The acts were not concurrent." D's attorney objected to this charge and to the refusal to charge as requested. Verdict and judgment for P. What result on appeal by D?

5. A telephoned B, an automobile salesman, that he was considering the purchase of a new automobile, and asked B to bring his demonstration car to A's country estate the next morning and take A for a drive. The next morning A and B started out in the demonstration car, with B at the wheel. While rounding a curve at 50 miles per hour, still on A's estate, they collided with the car of C who was on his way to deliver goods to A's house. C's car had slipped partly off the road and had come to a standstill while C was attempting to avoid a washout which made the road so narrow that only a skillful driver could get by the dangerous place. In the collision A, B, and C were injured. Discuss the respective rights of each against the others.

6. With the landowner's, L's, knowledge and permission, the Bosch Manufacturing Co. made a practice of dumping its waste in a ravine on L's land. The Bosch abandoned there a tank which it knew contained an exceedingly poisonous gas under pressure and was slightly leaking. A, age 8, was playing on the far side of the dump when he saw his father, B, come on in search of salvage. A followed B to the tank and, while B was removing therefrom a brass valve, both became asphyxiated. C, a neighbor, having learned of the injuries to A and B but not the cause thereof, went to assist them to their home and was also physically injured by the escaping gas. What, if any, are the rights of A, B, and C respectively? (Consider the rights, if any, of each as to his own physical injury only.) (Cf. *Sarna v. Am. Bosch Magneto Corp.* (Mass. 1935) 195 N. E. 328.)

7. *Res ipsa loquitur* does not apply in favor of a passenger where two moving objects on a highway collide. *Reardon v. Boston Elevated Ry.*, 141 N. E. (Mass.) 857. It does apply where a moving truck collides with a parked excavator. *Bryne v. A. and P.*, 168 N. E. (Mass.) 540. Is there any reason for the distinction?

What does "negligence as a matter of law" mean? (Make your answer concise.)

The standard of due care is objective. Are there any exceptions? If so, name them. (No discussion wanted.)

8. Ash, a bank president, was a candidate for governor. Beech, for the purpose of inducing Cedar to vote against Ash, said to Cedar: "I know as a fact that Ash has heavily embezzled the bank's funds." Beech believed this to be true, having been told it by a person whom he supposed to be in a position to know. Cedar, a stockholder in the bank, thereupon sold his stock at the market price to avoid an anticipated loss. In fact the charge was untrue; the stock rose in value, and after Cedar discovered the mistake he bought back the stock at an enhanced price. What, if any, is Beech's liability to Ash and Cedar?