

5-24-1938

T. C. Williams School of Law, University of Richmond: Torts II Exam, 24 May 1938

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Recommended Citation

University of Richmond, "T. C. Williams School of Law, University of Richmond: Torts II Exam, 24 May 1938" (1938). *Historic Law School Exams*. 54.

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1. Wallace was slowly driving his hay wagon, in which he had placed a large steel grain bin the top of which was about 12 feet above the level of the highway. Wallace had beside him on the seat a loaded rifle. Jingle Company's telephone wire strung across the highway, which had sagged very low, came in contact with the grain bin and caused the wagon to upset, throwing Wallace to the ground dislocating his collar bone. In falling, the bin struck the rifle and it was discharged. The bullet entered Wallace's chest and he was severely wounded. Wallace brings an action against Jingle. At the trial it appeared that shortly before the accident Wallace had jumped off the wagon to get a shot at a rabbit and that he had planned to shoot some wolves in a field toward which he was going. Wallace admitted, however, that he had no hunting license as required by the law. Discuss Jingle's liability for Wallace's injuries.
2. In violation of a city ordinance, Driver left his horse unhitched and unattended in the street. When struck by a mischievous small boy, the horse bolted, running into the show window of Israelite, a jeweler. A crowd gathered and after the horse was removed many items of jewelry were found missing. May Israelite recover from Driver for his damage?
3. Eleanor, a customer in Franklin's department store, becomes ill and asks to be assisted to the rest room. Franklin's manager assists Eleanor to the rest room. Eleanor lies down on a couch and soon thereafter, to the knowledge of Anna, the woman in charge of the rest room, becomes acutely ill; but Anna takes no measures to assist Eleanor or call for a doctor. Three hours later another customer summons a physician, who finds that Eleanor has suffered a ruptured appendix. Eleanor is rushed to the hospital and operated upon immediately. The surgeon negligently sews up the wound without having removed one of the sponges, and another operation has to be performed to remove it. There is testimony to the effect that had Eleanor been attended to more promptly the appendix could have been removed before the rupture occurred. What, if any, is Franklin's liability in tort to Eleanor?
4. Ale, a hit and run driver, negligently collides with Bottle who is also driving negligently. Bottle's car is upset and catches fire. Cork, and Curl, a young woman, driving along a minute later, discover Bottle's predicament. They rescue Bottle who is badly burned. In the course of the rescue Cork suffers slight burns. Curl is so affected by the sight and smell of burning flesh that she suffers a severe nervous shock with resulting hysterical paralysis from which it takes her several months to recover. Is Ale liable in tort to Cork and Curl?
5. Corpus, an elderly and infirmed man, and Juris, his young friend, while walking along a street in the City of Portland on a Sunday afternoon, paused to rest in front of Secundum's factory and seated themselves upon the sill of a doorway in Secundum's building which projected within four inches of the street line. There was nothing to mark the dividing line between the street and Secundum's premises. The feet of the two men were upon the sidewalk. While in this position a sign, maintained by Secundum upon the front of the building and which had not been inspected for five years, fell and broke the backs of Corpus and Juris. What, if any, are the rights of Corpus and Juris against Secundum? (Foley v. H. F. Farnham Co., (1936) 188 A. (Me.) 708.)

6. Esquire Woollen Mills, an Australian manufacturer of underwear, annually ships a large quantity of its articles to a wholesaler in New York who, in turn, supplies the needs of retailers throughout the United States. Some of these garments were sold to a retailer in Hixville from whom Elmer Zilch purchased an union suit of long winter underwear. After having worn the underwear several days, Elmer began to suffer from skin poisoning. Emma Zilch, Elmer's wife, contracted the skin disorder from her husband. Elmer and Emma severally brought actions against Esquire for their injuries. At the trial it developed that a quantity of free sulphites, a chemical used in the process of manufacture of underwear, was negligently left in this garment. The expert testimony further showed that this chemical is harmless unless it comes in contact with H₂O, but the natural moisture of the human body is sufficient to cause it to react and thus poison the skin of a human being which poison is communicable to other persons. Is Esquire liable? (Cf. Grant v. Australian Knitting Mills, (1936) A.C. (Australia) 85.)

7. Lelia Curtis attempted to cross the street between intersections and was hit by an automobile driven by one Nelms. The evidence showed that, except for Nelms' car, the street was free of traffic and no cars were parked at the curbs. Mrs. Curtis admits that she did not see the automobile until she had reached the center line of the street at which time it was about 50 feet away, and testified that she thought she could safely cross and therefore hastened her steps and had reached the curb before she was struck. The evidence further showed that although Nelms had a full view of the street for some distance back he did not see Mrs. Curtis until she was in the center of the street and about 50 feet away. Nelms testified that he thought Mrs. Curtis saw him and would not attempt to cross in front of him; that when he saw Mrs. Curtis he was traveling at a high rate of speed; that as soon as he saw her continue on in front of the car he applied brakes and swerved to the right; and that his brakes were in good order and skidded the rear wheels. In an action by Mrs. Curtis, Held: Nelms' failure to see Mrs. Curtis walking toward the center of the street, unmindful of the approaching car, was the proximate cause of the accident. (Dobson-Peacock v. Curtis, (1936*, 166 Va. 550.) What do you say to this?

8. Wahr was the owner of a club of which Byrne was a member. On complaint to police by Tattle, slot machines popular with the members were removed from the premises. The following doggerel verse implying that Byrne disloyally made the complaint was posted by Edgar A. Guess, another member, on the bulletin board over which Wahr had supervision:

"For many years upon this spot
You^d heard the sound of a merry bell;
Those who were rash and those who were not
Lost and made a spot of cash;
But he who gave the game away
May he Byrne in hell and rue the day."

Does Byrne have any right of action against Wahr? (Byrne v. Dean, (1937), 1K.B. 818.)

END.