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T. C. Williams School of Law, University of Richmond: Torts Exam, 28 May 1957

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UNIVERSITY OF RICHMOND LAW SCHOOL

TORTS Examination

Mr. Muse

May 28, 1957

1. A operates a cold storage plant, renting lockers to members of the public. B enters A's office and at gun point demands all A's cash. A grabs for B's gun. In the scuffle, A bumps into C, a saleswoman who has entered the office to seek directions to a nearby residence. C is not hurt but her blouse is badly torn as it catches on an obstruction; while obtaining a new blouse she misses several intended sales calls. A subdues and unmaskes him; he finds that the gun is a toy and that B is the 16 year old son of a customer of A. B protests that it was all a joke and was part of the initiation rites of a fraternity. A, not believing him but hoping to be helpful to B and his father, locks B in a refrigerated vault while calling B's father by telephone. B's father comes promptly for B, and upon hearing B's explanation, is angry at A over his treatment of B. What torts, if any? Why or why not?

2. On Sunday morning a bus of the City Transit Company was proceeding down a long and steep hill when the braking power failed, the driver lost control, and the bus crashed into a retaining wall at the foot of the hill. Eleven of the passengers were killed and forty-nine others, including A, were injured. The roadway was covered with rocks and debris due to a severe storm the preceding night and the highway people had not cleared the road by this time in the morning. The brakes had given trouble on the previous run that morning and the driver had stopped in the Transit Company's garage to have them adjusted which took five minutes. The seating capacity of the bus was thirty-eight. When the bus started its runaway trip down hill, the operator pumped the brakes. The bus was equipped with air brakes and an expert testified that pumping was the worst possible thing to do with air brakes and the proper thing to do was to keep the brake pedal down. The cause of brake failure was found to be that a pet cock located at the bottom of the brakes struck a rock and was broken off. It is necessary to periodically drain moisture from the air chambers of air brakes. It is desirable to have these outlets as low as possible for efficient drainage. The pet cocks on this bus were left unprotected, and, in a loaded bus, were so close to the ground that they are likely to be damaged or broken off causing air to escape and the braking system to fail. An expert testified as to the possibility of using a plug instead of a pet cock and the possibility of guarding the pet cock by a shield.

In a tort action by A against the Transit Company and the manufacturer of the bus for damages for personal injuries suffered, the lower court entered judgment on the jury's verdict for the plaintiff against both defendants. Also, in a tort action by the Transit Company against the manufacturer for damages to the bus, the lower court entered judgment on the jury's verdict for the plaintiff. The defendants appeal both cases. What disposition in each case on appeal? Why? (Cf. *Carpini v. Pittsburgh, etc.* (1954) 216 F. 2d 404 and *Judson, etc. v. Thew, etc.* (Cal. 1954) 275 Pac. 2d 841.)

3. A was a sleeping guest in a car driven by B when it came up behind a bus owned and operated by C. Just after the bus went over the crest of a hill, B started to pass it. C, picking up high speed to climb the next hill, waved his left hand with a backward motion indicating to B that B should not pass. Moments later, as the bus and B's car approached a gentle curve to the left, B again started to pass. C gave no signal to B, though a rapidly approaching car driven by D made it dangerous for B to pass. When the front of B's car was about even with the middle of the bus, B saw D's car. Concluding that he could neither pass the bus nor fall back behind it in time to avoid collision with D's car, B swerved off the pavement to the left, whereupon B's car overturned injuring A and B. What are the liabilities, if any, of the parties? Why or why not?

(Continued over)

4. At about 11:00 p.m., A negligently drove his automobile against one of two pillars supporting a canopy which extended back from the pillars, over gasoline pumps, to the front of a service station building to which it was attached. The pillar was knocked almost out from under the canopy. B, a deputy sheriff, arrived at the scene and gave A a ticket for reckless driving, whereupon the latter went home. At about 1:30 a.m. B informed C, the owner of the service station, that the premises were in an unsafe condition and told him that barricades ought to be erected. The next morning B again checked in at the service station and found that no barricades had been erected. While standing back about a pace from the outer edge of the canopy he noticed three children under it. He warned them to get out, and when they failed to heed his warning he took a step forward toward them, again warning them to get out. At that instant the canopy let loose from the service station, slid toward the side where B had been standing, collapsed, fell upon and severely injured him. May B recover from A? May B recover from C? Why or why not? (Cf. Parks v. Sparks (Mich. 1955) 70 N.W. 2d 805.)

5. A, a young house-moving contractor, was standing on the roof of a slowly moving house for the purpose of observing and signaling as to overhead obstructions. B, a bystander who was aware that A was sensitive about his thinning hair, yelled, "Don't scrape your scalp on the sky, Baldy." A turned to reply to B, then looked back ahead just in time to see that he was almost upon a Power Company wire which sagged to a point twenty-eight feet above the ground, though an ordinance required that such wires be at least thirty feet above ground. A suddenly fell prone to the roof to avoid the wire, and the wire cleared him and the house by inches. The movement of the house was stopped. A was taken from the roof in a state of semi-consciousness. The physician treating him found partial paralysis, and expressed the opinion that it resulted from a hemorrhage in the brain incident to excitement; he also expressed the view that anger at B, fear of contact with the live wire, or a combination of such factors caused the excitement. May A recover from anyone? Why or why not?

6. (a) A Corporation employed an accounting firm to prepare a financial statement of the corporation which it stated it wished to use in seeking a loan from B Bank. B refused the loan. A then exhibited the statement to C Bank and obtained the loan. Through negligence the statement omitted a large account payable. With the new capital secured from C the corporation took on new financial life and prospered. Unfortunately a tornado completely destroyed its plant which was not insured against this risk. Unable to collect but 50 cents on the dollar from A, C now seeks to hold the accounting firm liable for the rest of the debt. May it do so? Why or why not?

(b) A returns from the Army and meets his former fiancée B, who has thrown him over. B was being escorted by her current "steady." A says to B: "You two-timing slut." B suffers great humiliation. Is A liable to B? Why or why not? (There are no statutes.)

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