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T. C. Williams School of Law, University of Richmond: Torts II Exam, 24 May 1939

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UNIVERSITY OF RICHMOND LAW SCHOOL

TORTS II Examination

May 24, 1939.

Professor Muse

1. Anthony buys Blackacre on which there are old shade trees close to the road, some of them in such condition that they may be expected to fall at any time. Six months later, one of these is blown down in a very heavy unseasonable storm. The tree falls 100 feet in front of Brutus who is driving his car at a rate of 60 miles per hour in order to get aid for Caesar who has been severely hurt. Brutus is unable to stop in time to avoid running into the tree. He is hurt and Caesar is thereby deprived of aid. Discuss Anthony's liability, if any, to Brutus and Caesar.
2. A tug belonging to defendant, while being negligently navigated, barely missed ramming Brown's yacht on which he was riding. Before it could be straightened out the tug did ram Sinram's barge, which was being towed light by Danna's tug to receive a cargo of coal belonging to Brown. The barge was struck a heavy blow above the water line. Sinram examined the outside of the barge to discover the extent of the damage, but her outside was covered with ice and he could find nothing. In examining the outside of the barge Sinram fell into the icy water from which he caught a severe head cold. Sinram did not go below to examine the inside of the barge, where the cracks in the planks would have been visible. Sinram ordered the barge to be loaded with Brown's coal. The damaged planks being thus forced under the water, the barge sank. Separate actions are brought by Sinram and Brown against defendant. Discuss defendant's liability, if any, to each. (Cf. Sinram v. Penna. R. Co., (1932), 61 F. (2d) 767).
3. Allen, employed as manager of a crew of an armored money truck, was riding on the outside of the truck straddling the left front fender, with one foot on the bumper and holding himself on by grasping the radiator cap. He had just been attempting to repair the mechanical signal device. Brown, whose car was parked on the side of the road, without looking back and without giving a warning signal, as required by statute, pulled out into the traveled part of the highway and collided with the right front bumper of the money truck. Allen was thrown off sustaining injuries. Had the driver of the truck been on the alert he could have avoided the collision, but a sudden swerving might have thrown Allen off. A city ordinance provided: "No person shall, when riding, allow any part of the body to project beyond the limits of the vehicle, except when signaling with the arm, nor shall any person hang on to any vehicle". Discuss Brown's liability, if any, to Allen. (Cf. Guile v. Greenberg (1934) 257 N.W. (Minn.) 649).
4. Miss Abbott was riding in the first automobile following the hearse in a funeral procession. The coffin contained her deceased mother. The Tramway Company's servant so negligently operated a tramcar that Miss Abbott suffered reasonable fear that the hearse would be upset and the corpse be thrown from the coffin into the public street. The tramcar miraculously escaped collision with the hearse and came to rest as it gently struck the automobile in which Miss Abbott was riding. Miss Abbott suffered no physical injuries when the impact came, but afterwards became hysterical and suffered from stomach trouble and acute nervousness. Two months later, in another city, while Miss Abbott was sitting in an automobile parked near the curb and out of the path of street cars, a street car of the Railway Company approached from the rear, the motorman clanging its bell. Miss Abbott immediately became hysterical, later fainted, and during the following night one

side of her body became paralyzed from what was diagnosed as hysterical paralysis. Miss Abbott brought separate actions against the Tramway Company and the Railway Company to recover for all her injuries.

(a) From dismissal of the action against the Tramway Company on the ground that recovery for shock could not be based upon apprehension of peril to other than a living person, the plaintiff appealed. What decision? Why? (Cf. *Owens v. Liverpool Corp.* (1938) 4 All Eng. 727 (C.A.), and *Sundquist v. Madison Rys. Co.* (1928) 221 N.W. (Wis.) 392).

(b) From dismissal of the action against the Railway Company on the ground that recovery for shock is not actionable unless accompanied by impact, the plaintiff appealed. What decision? Why?

5. Defendant is an oil producing company. Without negligence on its part, oil and refuse escaped from its wells, floated down a stream and accumulated in the vicinity of a county bridge over the stream. County employees, who had authority to destroy noxious weeds that "may be injurious to the highways or the best interest of the farming community", set fire to weeds sixty feet outside the highway. The fire spread to the stream, ignited the oil and refuse which had collected there, and destroyed the bridge. Discuss the liability, if any, of the defendant to the County. (*State Highway Com. v. Empire Oil & Refining Co.*, (1935), 40 P. (2d) (Kan.) 355).

6. Duff, whose business was cutting and storing ice, employed Peters to assist in putting ice in Duff's icehouse. Peters was stationed on a platform 15 feet above the ground. One side of the platform was railed, the other not. As the platform was narrow, wet, and slippery, Duff's foreman told Peters to stay on the west (railed) end of the platform. Peters, however, without sufficient reason or excuse, went on the east (unrailed) portion, although a fellow workman warned him of the danger of falling off. While Peters was standing there, the brick wall of the building collapsed and bricks fell upon Peters injuring him and at the same time knocking him to the ground causing further injury. The wall was defective, as a careful inspection would have revealed, but the defect was unknown to Duff and to Peters. Discuss Duff's liability, if any, to Peters. (*Smithwick v. Hall*, (1890), 21 Atl. (Conn.) 924).

7. Anson, a lawyer, was employed by Barton to examine Barton's title to Blackacre and give an opinion thereon. In examining the title, Anson found in the records a deed from Carter (now deceased) to Barton which did not state whether or not Carter was married. Anson gave Barton a written opinion that Barton's title to Blackacre was good and free of incumbrances. Barton showed this opinion to Doud, a prospective purchaser of Blackacre, who bought Blackacre in reliance thereon for \$10,000. It later developed that Carter had been a married man and that his widow was still living. Carter's widow claimed dower in Blackacre, and Doud, to settle her claim, paid her \$1,000. Later Doud sold Blackacre to Evans for \$11,500. Discuss the liability, if any, of Anson to Doud.

8. In the summer 1938 a voluntary committee of citizens drafted a petition to the President of the U.S. requesting that the U.S. recognize the Franco government as the lawful government of Spain. They sent copies to various prominent persons, asking them if they were willing to have their names added to the petition. Plaintiff, a well known sympathizer with the Loyalist government, replied in the negative. Jones, the secretary of the committee, as a practical joke, included plaintiff's name in the petition, which was forwarded to the President. Copies of the petition were furnished to the press, which carried facsimiles of the petition. Smith, a news commentator, on a program sponsored by a commercial company, read and commented on the petition in his nightly program over radio station WOW, and expressed surprise that the plaintiff had turned traitor to his former allegiance. Discuss the liability, if any, to the plaintiff of Jones, Smith, the newspapers, and the broadcasting company.