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T. C. Williams School of Law, University of Richmond: Torts Exam, 21 May 1969

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UNIVERSITY OF RICHMOND LAW SCHOOL

TORTS Examination

Mr. Muse

May 21, 1969

1. A, a stranger, while walking near B's barn over B's open and unfenced fields, heard loud cries. He ran into the barn where he found B lying on the floor and C threatening D with a gun. A struck at C with a pitchfork. D, who with B and C had been rehearsing a melodrama, rushed at A as soon as he saw what was happening in order to prevent serious harm to C. In the ensuing struggle A stepped back onto a trapdoor with defective hinges and fell into the manure cellar. Despite A's cries that he could find no way out, B, C, and D left without letting down a ladder. After feeling around in the dark, A finally made his escape through a door. What are the tort liabilities, if any, of the parties? Why? Why not?

2. A statute provides in part:

"No person shall furnish or give to a minor under seventeen years of age an air rifle, or being the owner or having charge or control thereof, knowingly permit it to be used by a minor under such age. Violators are subject to fine or imprisonment, or both."

D purchased an air rifle for the sole use and enjoyment of her son S, aged fifteen, with whom she lived in a semi-rural area near a city where she worked. D's husband (S's father) had died when S was ten, and D had trained S early to a solid sense of responsibility as "the man of the house." Long familiar with firearms, both real and toy, D trained S in the systematic practice of care in the use of the air rifle. Among other things, she drilled into him that he must always unload the air rifle when he stopped using it. S used it mainly as a toy in target practice, but occasionally shot rabbits which invaded D's vegetable garden.

One Sunday afternoon P and F, friends of S and the same age as S, were visiting S. They used the rifle for a while in target practice. Then S placed the rifle, with some BB shot still in it, leaning against the side of the house as the three boys began to play catch with a baseball. F missed a ball which rolled near the house. F, chasing the ball, saw the air rifle. On an impulse, F picked up the rifle and pointed it at S and P. S yelled, "Cut it out. My mother will get sore, and take the gun from me." F, nevertheless fired at S and P, missing. They ran away, S still shouting to F to "cut it out," F pursued, firing once again. The shot struck P, who had looked back while running, in the eye, putting it out. Is D liable to P? Why? Why not?

3. D owns and resides at 10 Downing Street which premises he purchased from V three months ago. Prior to the sale, V had piled several truck loads of earth mixed with fragments of glass and other debris in the back yard, where it lay in the form of a mound. While V still owned the premises, children from the neighborhood began to frequent the mound. They continued to do so from time to time after the sale to D. Among the games played were "cops and robbers" and "cowboys and Indians." They used clods of the earth as weapons. One morning P, five years old, joined a group of boys who trooped onto D's premises and played "cops and robbers" on the mound. Being a "cop," P pursued another boy, a "robber," who threw a clod of the earth containing broken glass at P. The clod hit P in the face, a sharp splinter of glass cutting a deep gash which has left a permanent, ugly scar. May P recover from D or V? Why? Why not?

(over)

4. Jet Set, a fashionable restaurant, acquired a nuclear kitchen installation, called a "Nu-Kitchen" consisting of a stove, refrigerator, freezer, and other appliances powered by a central nuclear plant. The Nu-Kitchen was purchased from Fission and Fusion, Ltd., a local retail store. It was made and assembled by Nu-Kitchens, Inc. at its plant located in a distant city and state. Nu-Kitchens have been extensively advertized in newspapers and magazines throughout the United States, including the daily newspaper in the same city with Jet Set. The cost of the advertizing in the local newspaper was shared equally by Nu-Kitchens, Inc. and Fission and Fusion, Ltd.

Mitsos, a cook employed by Jet Set, was seriously injured by radiation while using the Nu-Kitchen. He brings an action for damages against Fission and Fusion, Ltd. and Nu-Kitchens, Inc. for (1) breach of implied warranties and (2) Nu-Kitchens' negligent failure to install shields of sufficient thickness to prevent nuclear "leakage" in dangerous quantity. The defendants file a motion to dismiss plaintiff's action (1) for failure to state a cause of action against either defendant and (2) for Mitsos' negligence in not following the manufacturer's manual of operation.

The trial judge denied the defendants' motion. Both defendants appeal from the order denying the motion. Would you affirm or reverse the trial judge? Why? Why not?

5. At an intersection D negligently collided with another car being driven by A causing A's car to veer across the sidewalk and strike and seriously injure a small child playing there. The car came to rest well up in the front yard where the child lived. The child's mother, M, happened to look out of the front window and saw the cars as they collided and saw A's car strike her child. This was also witnessed by the child's sister, S, aged 22, who was seated on the front porch. Each undergoing great emotional stress, M suffered from nervousness and loss of sleep for an extended period and S suffered a miscarriage. M and S bring separate tort actions against D. May they recover? Why? Why not?

Suppose A's car narrowly and miraculously missed the child and she was not harmed. Would you change any part of your above answer?

Suppose M was the child's grandmother. Would your above answer remain the same?

Suppose the child's own negligence was a cause of her injury. Would your answer be the same?

Suppose M did not see the crash but heard the cars collide and the child's screams. Your answer the same?

END