

EMPIRE COLLEGE SCHOOL OF LAW

Professor Stogner

Torts – Final Exam

Spring 2010

Thursday, April 22, 2010

Question One – 1 Hour

Vicki was a brand new lawyer who had just been hired by the Frontier County District Attorney's Office. Her first case was a marijuana possession charge against a local hippie named Avery. Garth was the publisher of the Frontier Tattler, a small weekly newspaper well known for liberal views and wild editorials. One morning Vicki picked up the Tattler and read the following editorial written by Garth: "Avery's prosecutor is a hypocritical hawk, a pot user in possession of her very own, well used, medical marijuana card, who has swooped down to snatch Avery in her huge talons. She intends to carry Avery back to her nest to feed the hungry chicks of her ego, their little beaks agape and skyward." Vicki had never smoked marijuana or possessed a medical marijuana card.

Upset, Vicki decided to "get the goods" on Garth. She climbed a redwood tree near his house at 420 Fourtweenty Lane and peered down into his upstairs window with a pair of binoculars, hoping to find an indoor marijuana grow. She saw nothing but Garth, who was reading Hustler magazine in his arm chair. Frustrated, Vicki telephoned Garth on three separate occasions, leaving a message each time for him to call her back. Garth called her back each time. With a record of Garth's calls Vicki complained to the Frontier Sheriff's Department and caused Garth's arrest on a charge of making annoying, unwanted telephone calls (Penal Code Section 653m). Garth was prosecuted for the charge, but found not guilty by the jury.

What are Vicki's causes of action against Garth and what are his defenses? Evaluate.

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Question 2 – 1 Hour

Bubbles, Inc. manufactured hot tubs. Spanky purchased one of the hot tubs. When it was delivered to his home he quickly scanned the brochure and installation instructions. The brochure said on page 6: “The electrical system is ‘short proof.’ All wiring is insulated and safe.” The brochure also warned on page 9: “No diving or jumping into hot tub. Bottom slippery.”

After Spanky installed the hot tub and heated it up he drank a half bottle of Cabernet Sauvignon and felt excited and ready for a soak. Spanky, rather than stepping gingerly into the hot tub, jumped in. When his feet struck the bottom of the tub the thud jarred loose the underwater lamp, allowing water to seep into the lamp’s wiring. The water seepage into the lamp’s wiring caused a short in the electrical system and produced an electrical current which surged through the hot tub and delivered to Spanky a severe electrical shock. Spanky pulled himself from the hot tub just before losing consciousness. A neighbor found Spanky one hour later and took him to a hospital, where he lingered in a coma for two weeks before dying of pneumonia brought on by his coma-induced incapacitation.

What are Spanky’s causes of action against Bubbles, Inc. and what are Bubbles, Inc.’s defenses? Evaluate.