

Torts--Final Exam
Spring, 2016
Question One – Issue Outline

Pugh v. Don

Products Liability

--Negligence

- was the USB connector carelessly designed in light of the brochure's statement that the speaker was safe for use with all personal computers?
- was Pugh's trimming of connector a superceding intervening act, negating proximate cause?

--Express warranty

- was brochure's statement in fact a warranty of safety breached by Don's creation of a USB connector which did not connect with Pugh's PC?

--Implied warranty

- did shape of USB connector breach implied warranty of merchantability in light of brochure? If so, did this relate to its safety?

--Manufacturing defect

- not likely as USB connector and cord apparently created in accordance with blueprint.

--Design defect

- in light of brochure USB connector may have been carelessly designed, but did this increase risk of injury or property damage to consumer?

--Failure to warn

- was a "do not alter shape of USB connector" warning required?

--Defenses

- comparative fault for trimming connector
- implied assumption of risk (see UCC Section 2-715)

--Defamation

- Slander per se: Don's false statement that Pugh threatened to kill him (qualified privilege in that Don's false statement was made to law enforcement inapplicable as Don's falsehood was intentional and thus in bad faith).

--Malicious prosecution

--Don's false statement led to Pugh's arrest and prosecution

Don v. Pugh

--Defamation

--Libel: Pugh's statement that Don's speakers were designed to electrocute may be injurious to Don's reputation

--False light

--Pugh's claim that when he interviewed Don about his product's lack of safety Don "just laughed."

--Injurious falsehood

--Pugh's statements about Don's speakers "designed to electrocute" may be related to Don's business as opposed to him as an individual.

--Intentional misrepresentation

--likely not applicable as Pugh's statement did not result in Don's changing his position in reliance on any statement

--Interference with prospective economic advantage

--following Pugh's statements Don saw a drop off in business, suggesting that Pugh's statements interfered with Don's prospective economic advantage

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Question Two – Issue Outline

Pert v. Dunn

--Intrusion

--installation of a listening device in Pert's office

--Publication of private facts

--Dunn's statements about Pert's "severe prostate issues"

--Defamation

--medical problems that require a prolonged leave of absence are likely not false facts that are injurious to reputation; thus likely no defamation

--False light

--claiming that Pert's prostate problem was severe and may require a prolonged leave of absence may wrongly portray him as suffering from debilitating health problems.

--Intentional infliction of emotional distress

--Dunn's behavior not likely to rise to level of IIOED

Dunn v. Pert

--Battery

--worm in soda can an indirect touching with intent to offend

--Strict liability

--use of bat (a wild animal) to harass Dunn

--Negligence

--taking bat to Dunn's office breached a duty of due care; Pert knew Dunn was afraid of bats, but this doesn't mean his intent was to cause apprehension of battery by bat when he opened towel. Revulsion may have been his intent.

--Assault

--likely no intent to create apprehension of imminent harmful touching by opening bat towel

--Battery

--no intent to touch and no transferred intent from an assault because of no assault

--IIOED

--use of bat and fake email campaign

--Defamation

--Libel: emails in which Pert pretended to be Dunn drunk are likely false statements concerning Dunn

--Prima facie tort

--Pert's attempt to torpedo Dunn's career at College and then at Goblin U

--Interference with prospective economic advantage

--Pert's efforts to defeat Dunn's Goblin U ambitions, if the expectancy is sufficiently probable