

TORTS
Carr
Spring 2018

FINAL EXAM
ISSUE OUTLINE--QUESTION 1

Ann (estate) v. Sue Misrepresentation (define) In her advertising for the resort, Sue told her prospective guests that Jim was a “world-renowned herbalist.” She was aware this was untrue and she expected her guests to believe it; Ann did, to her detriment. Sue will argue that Ann’s action in eating the raw herb was unreasonable and negligent, but the reasonableness of Ann’s conduct is bolstered by Sue’s misrepresentation of Jim’s qualifications. If Ann’s action was unreasonable to some degree, it would constitute comparative negligence, possibly reducing her estate’s damages recovery but unlikely to wholly negate her estate’s survival cause of action or the wrongful death action brought by her survivors. 6 points

Ann v. Jim (estate) Misrepresentation and Negligence (define) If Jim communicated by speech—or deed, as it seemed from his role and lectures—that he was indeed a “world-renowned herbalist” then his estate is likely liable for that misrepresentation, along with Sue as described above. In addition, his self-depicted expert status created a higher duty toward those who foreseeably could rely on the misinformation he presented. His breach of that duty was an actual cause of Ann’s death, and unless her volitional act of eating the plant—or the action of the drunk driver discussed below—is deemed to be a superseding cause, her death flowed in a natural and uninterrupted sequence from Jim’s act of telling her the plant was a likely cancer cure, making Jim’s estate liable for his negligence. Sue is likely vicariously liable as well by application of *respondeat superior*.

Jim’s estate may raise the issue of Ann’s eating of the plant as itself so unreasonable as to be far more negligent than Jim’s conduct, both on its face and by the doctrine of Negligence Per Se (define). The Negligence Per Se claim will not prevail because one of the two requirements for application of the doctrine is absent: the statute states its purpose is to preserve the desert environment, and not to protect humans like Ann from injury from the plants. 10 points

Lynn (estate) v. Storm Battery (define) Lynn apparently has a cause of action in tort against Storm for battery: his repeated shoving of Lynn was at least offensive. Storm may claim his action was justified as he was administering emergency aid to Ann, but no reasonable person would have acted in that manner. 3 points

Ann v. Storm Battery Unconsented harmful touching, in that his misguided efforts prevented Lynn from possibly rendering more effective medical assistance. 2 points

Ann v. Storm Negligence If Storm accedes to the role of a professional medical provider, his conduct created a duty to act with a reasonable degree of competence; he did not. That breach MAY have caused Ann injury; that would be a question for expert testimony. It may be that his delaying medical treatment by Lynn will be seen as a substantial factor in Ann’s ultimate death, making Storm jointly and severally liable with Sue, Jim, and the drunken driver, with each claiming some offset based on Ann’s unreasonableness in eating the herb. 5 points

Storm, Lynn & Ann v. Jim Negligence The three victims of Jim's bad brakes (and/or driving) have a cause of action against him, assuming proof of his duty to maintain the brakes and that the breach of that duty was the actual and proximate cause of the injury. Clear that it was an actual cause, but uncertain whether the deaths of any or all of these three plaintiffs would have resulted from being run over by the van, or only ensured by the flaming crash later with the drunk driver/guest. Sue may be liable for this as well through Respondeat Superior, as Jim—an evident employee—was acting in the scope of employment at the time. If facts arise showing Jim was Sue's partner, not an employee, very likely Sue would be liable for his acts in this Joint Venture.

Jim may claim his over hasty driving was required in this emergency, but he apparently used a faulty tool (the van) in an unreasonable way, negating this defense. 8 points

Jim, Storm, Lynn & Ann v. Drunk driver Negligence The facts state that the drunken driver collided with Jim, which implies he failed to drive with due care; that breach clearly contributed to the injuries of the three already bleeding guests and may have been part of an indivisible injury, sharing that liability with Jim. Jim was previously uninjured, so his damages would be fully attributable to the drunk driver if Jim wasn't contributorily neg. The guest's voluntary intoxication is not defense and, depending on the statutes regarding commercial provision of alcohol to paying customers (Dram Shop Acts) in this state, may make Sue also liable for the harm caused to the third parties by the drivers intoxication and, depending on the statute, to the driver himself. Jim was "driving madly" to get his injured guests medical care, so he may also have been driving without due care, making him potentially liable in this regard to the three guests--and possibly to the drunken driver as well--as apportioned by comparative negligence principles. 8 points

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Bike Store Owner Rick v. city officer Nan Violation of civil rights (§1983) Nan's threats to Rick likely to be held a violation of his civil rights by a state actor, giving Rick a cause of action in tort against Nan and possibly the city, thru respondeat superior or negligence for negligent hiring, training, or retention of Nan. 5 points

Neighbors v. Rick Private nuisance The new, overly-bright sign atop Rick's shop may constitute a private nuisance, interfering with their quiet enjoyment of their property. If so, Rick may abate the nuisance and/or pay damages. 4 points

Jill v. Botbike Defective product liability Probable that Jill prove the elements of this cause of action, both for defective design and for failure to adequately warn. Question as to whether Botbike or the cops following too closely who ran her over will be held more liable; likely both seen as joint tortfeasors, with damages apportioned according to comparative negligence doctrine. 8 points

Injured Botbike riders & drivers of damaged cars v. Botbike Defective product, as above, as well as Negligence in implementing idiotic Plan ONO, which caused far more injuries than it saved. 6 points

Jill v. Police/City Negligence If the police attempting to rescue Jill from her wayward Botbike were do so without due care, they will share liability with Botbike for Jill's injuries. City would then likely be liable under respondeat superior, or for its own negligence in failing to adequately train/supervise the cops in that car. 5 points

Stella v. Reporter/Newspaper Defamation NY Times standard for evaluating free speech interests v. plaintiff's reputational interests would apply here; clearly a public figure and a matter of significant public concern. Reporter's haphazard investigation and newspaper editor's refusal to hear facts from plaintiff may satisfy the actual malice requirement to let plaintiff prevail, despite paper's use of waffling "rumored" term in story. 8 points

Stella v. Photographers/Newspaper Intrusion into Privacy No defamatory untruth here, but most private parties would be unhappy to see intimate pictures from their bedroom in the newspaper. News likely to claim a 1st Amendment right to publish, but the photo added little information and is more likely to be seen as prurient sensationalism, and a tort. 6 points