

TORTS
Summer 2012
Final Examination

ISSUE OUTLINE--QUESTION 1

Bill v. Jane Negligence (define) Jane held to standard of professional in designing barrier she knew was intended to protect neighboring property. 3 points

Bill v. Lisa & friends Trespass (define) The elements of this tort satisfied, but nominal damages. Defs will claim defense of attractive nuisance, which may be inapplicable if they are more adults than children in apparent understanding. 3 points

Lisa v. Bill Negligence (premises liability) Under the contemporary *Rowland* standard, Bill had duty to eliminate or adequately warn of risk of the pond and rock waterfall; he was aware of use of pond by kids. His defense of assumption of the risk may prevail if evidence that Lisa & friends sufficiently mature to appreciate the risk. That defense ended, however, when Bill refused to allow paramedics to enter to treat an emergency, an unreasonable stance. More exacerbated if we argue that Bill's neg was a contributing factor to the emergency. 5 points

Al v. Bill Neg Bill altered natural condition of the water table with his pond, even after warning by contractor Sig. Failed effort to prevent the harm by retaining expert to construct barrier will allow Bill will seek contribution from Jane for harm to Al's property. Because harm may be ongoing, alternative C/A for private nuisance could be argued. 5 points

Lisa v. Friend Neg The touching of unconscious Lisa privileged by the emergency of her injury. A separate issue is whether the friend acted reasonably in his attempt to revive her; if not, he may be found to be neg, with the resulting indivisible injuries making the friend jointly and severally liable. 3 points

Two arrested neighbors v. Officer Sally **False arrest** (define) is the more particularly suitable tort here, though there was clearly **false imprisonment** as well. Officer Sally will also be subject to a **§1983 action** for violation of the two arrested individuals' **civil rights**. Finally, Officer Sally committed a **battery** against both, when there was no legitimate basis for either cuffing or tasing the two. 8 points

Bill v. Al Trespass This intentional trespass, by means of the electrified dumbbell Al intentionally threw onto Bill's property, resulted in the death of the fish in Bill's pond, the only evident damages. A tenuous argument could be made for **conversion**, by means of transferred intent, but why bother when the trespass will cover the loss. 4 points

Paramedic Todd v. Al Battery Doctrine of transferred intent converts Al's trespass against Bill to a battery against Todd—assumes wrongful death/survival statutes exist here. 3 points

Lisa v. Al Battery The same transferred intent that applied to Todd covers Lisa's indivisible injury, making Al liable jointly and severally liable for her death. 4 points

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ISSUE OUTLINE--QUESTION 2

Ann v. Zack Defamation (define) While Zack's statement relates primarily to the product and could be styled "trade libel," he does also call Ann's winemaking process "a complete fraud" implying her dishonesty or even criminal act in selling the winemaking kit. If false, as it seems to be, the statement is clearly defamatory. Zack will claim it was privileged opinion. 5 points

Ann v. Magazine Defamation Republication of Zack's defamatory statement—if not held to be mere opinion—would be republication of defamation and make the magazine liable if Ann a private figure. If the controversy made her a public figure, *NY Times* doctrine would require proof of magazine's "actual malice." In either event, defendant magazine will claim statement was verbatim quote and thus privileged as fair comment/reporter's privilege. 5 points

Zack v. Magazine Defamation Zack's voluntary interview likely made Zack a limited public figure in this context, so *NY Times* standard would apply to this media defendant. Issue of whether the error confusing Zack with a defrocked, money-laundering child molester constituted "actual malice" or was simple error and whether defendant magazine made immediate retraction or other efforts to mitigate, unknown from these facts. 4 points

Ann v. Paul Paul's statements in his press release were factually accurate, so not defamatory. However, they clearly attempt to create a misapprehension about Ann, casting her in a false light, for which she has a cause of action. (Paul also liable for Stella's tampering, below.) 5 points

Ann & Norm v. Tess Interference with advantageous business relationship. Tess's efforts to coerce Norm's Groceries from selling Ann's kit by a boycott of all members of her statewide association a clear interference with existing business relationships and commerce. 4 points

Injured "Wine Now" drinkers v. Ann The apparent manufacturing error at Ann's factory would make her strictly liable for all injuries to foreseeable drinkers of the tainted wine. The criminal act of switching the labeled chemicals by burglar Stella could constitute a superseding cause in any ordinary negligence action, but the public policy of making manufacturers "strictly liable" would mean Ann would still be found primarily liable for the harm. Ann could then seek indemnity from Paul and his agent, Stella. Plaintiffs would not be able to invoke doctrine of "negligence per se" for Ann's violation of the statute, because the violation was not the cause of the mix-up of the chemicals that caused the plaintiffs' injuries. 9 points

Ann v. Stella and Paul Trespass to Property/Trespass to Chattel (define) While not his employee, Stella's act of trespass was intended, initiated and knowingly facilitated by Paul, who would be liable as well for the damages to Ann brought about by the burglary and tampering with the winemaking chemicals. Both should be required to pay Ann's loss of business reputation and monies paid to the injured plaintiffs who recovered in product liability suit against Ann. 6 points