

TORTS
Carr
Summer 2017

FINAL EXAM
ISSUE OUTLINE--QUESTION 1

Injured Customers & Decedents' estates v. Volcano Mfg. Defective Product Liability (Define) The customers were foreseeable end-use consumers injured by a product defective in its design—any impurities in water or the coffee beans produced “unpredictable”(and here, fatal) consequences—and/or failure to adequately warn. Volcano can claim that its liab to the coffee shop's customers was severed by the intervening act/superseding cause of Alice's use of non-organic beans; Alice likely to counter that Volcano produced a commercial machine it knew would be used in a coffee shop and that the printed warning to her from Volcano was insufficient to put her on notice. Alice and Volcano likely to be found joint tortfeasors, with their proportion of liability to be determined by principles of comparative negligence. (See “Customers v. Alice,” below.) 8 points

Alice v. Volcano Defective Product Liability & Contribution Same issues regarding Volcano's alleged design flaw and failure to give adequate warning of danger; Alice's damages were strictly monetary—the amount of revenue lost that she could prove. Alice would seek contribution from Volcano for the any damages she had to pay to the injured/dead customers suing her for their injuries, if Volcano was not joined as a defendant in that original suit for damages. 5 points

Injured/Dead Customers v. Alice Negligence (Define) Alice had a duty to avoid subjecting her customers to unreasonable risk of harm, particularly when she was put on notice that any beans other than organic could produce “unpredictable effects.” Alice breached that duty by failing to take reasonable steps to ensure the beans in the unmarked bag Joey bought from Tom's supermarket were organic, or stopped serving the new coffee until verified organic beans were obtained; Alice's use of the beans was an actual cause and, as the injuries flowed in a natural and uninterrupted chain from Alice's use of the beans to the customers, it was the proximate cause of injury as well. Alice may point to her “warning” sign that only the adventurous should sample the coffee to claim all customers had implicitly waived any claim of negligence or that they were therefore comparatively negligent, but that “warning” gave no actual notice of the extent of the risk (death). 6 points

Injured/dead Customers v. Tom Negligence Customers (and Alice, see below) will invoke the doctrine of Negligence Per Se in light of Tom's violation of the statute. The statute's intended objective uncertain, but consumer protection could very well be argued, and the coffee drinkers were in the class of consumers. The sale of the non-organic beans as organic was an actual cause of the customers' injuries (“but for” Tom having sold the non-organic beans as organic to Joey/Alice, the injury to plaintiffs would not have occurred) but Tom's unwitting sale of the beans unlikely to be held to be the proximate cause, given Alice's higher knowledge of the risk and her later arising opportunity to prevent the harm, which would constitute a superseding cause of the injuries. If the statute held not applicable, the plaintiffs could proceed under a

straight negligence cause of action, for Tom's sale of unmarked beans and/or storing the coffee pallets in a dimly lit room. However, plaintiffs' deaths/injuries not likely to be seen as foreseeable from mere inadvertent sale of commercial grade beans as organic beans, so no "reasonable seller" duty existed. 7 points

Alice v. Tom Negligence Alice's claim of liability against Tom would fail for the same reasons given above, whether alleging the violation of statute to prove a duty existed and its breach, or simple negligence. 3 points

Tom v. Jill Defamation (define) As the statements Jill published in her press releases were allegations of fact very likely to subject Tom to community obloquy and condemnation, the remaining issues are 1) were the statements "false", and 2) what level of 1st Amendment protection will Jill's statements be given under applicable Supreme Court rulings?

As to "falsity": Jill's claims that Tom was a "violent criminal" (he was acquitted at trial) who sold "tainted beans" (the beans were apparently non-toxic in ordinary, anticipated use) were false and are sufficiently defamatory of the storeowner's reputation in the community.

Assigning Tom a relative place in the spectrum of 1st Amendment protection for speech, from the slight protection given public figures/public officials in matters of public concern to the much greater protection given to private figures in matters of only private concern, Tom would likely be held a private figure (no prior notoriety and his involvement in this matter was wholly involuntary) in a matter of legitimate public concern. The Court's holding in *Gertz* would likely apply, which would not require Tom to prove "actual malice" in Jill's speech. Tom likely to recover for all "actual injury" caused by Jill's defamatory publication. 9 points

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Jim v. Skaters Private nuisance (define) The noise generated by the boards for hours every Sat & Sun in this otherwise idyllic setting likely to qualify as nuisance, warranting an order enjoining excessive noise, if not money damages. 3 points

Jim v. Skaters Assault (define) Test is whether a reasonable person in these circumstances would think a battery was imminent from the skaters' conduct in 1) skating very near the immobile Jim (unlikely) or 2) throwing an empty drink can that passed near Jim's head (possible, given the accompanying voiced hostility) 3 points

Jim v. Spitting Skater Trespass/trespass to chattel (define) Facts unclear on whether the skater stepped onto Jim's property (trespass, even if no damages) to spit into his mailbox. The liquid defilement of Jim's mailbox would itself be either a trespass if the mailbox is a "fixture" of the property (a technical property law question you needn't answer) or at the least a trespass to chattel. 3 points

Jim v. Skaters Trespass (if not defined above) When the boards went "flying solo" onto Jim's property, a trespass occurred at each intrusion; same violation if the skaters ventured into the yard to retrieve the boards. 2 points

Jim v. Deputy Sue Violation of Civil Rights Deputy Sue, a non-Federal law enforcement officer, was acting "under color of law" in threatening Jim with retaliation if her continued to file complaints about the noisy skaters, a likely violation of section 1983. 3 points

Jim v. photographer-skater Trespass and Intrusion into Privacy In taking the photo over the tall fence of Jim who had a reasonable expectation of privacy in that moment, skater was liable for both torts. 3 points

Jim v. Newspaper Intrusion into Privacy and False Light Depiction Because the inflammatory headline was arguably not "false" no defamation claim would lie, but the story and the very unflattering picture were likely to put Jim into an unsavory False Light. The publication of the photograph was also an Intrusion Into Privacy. 5 points

Injured Skaters v. Jim Battery (define) Jim should have known to a substantial certainty that the first skaters to try to skate on the wet road would not know oil was present and would fall. 3 points

Jim v. Skaters Battery The skaters could not claim self-defense or defense of others in their vengeful attack on Jim, which continued until he was unconscious. Facts unclear if this beating would have itself been fatal, or was fatal only combined with the car running over Jim. 3 points

Car owner v. Jim Trespass to Chattel/Neg (define Neg) Owner of the car that slid off the road and onto Jim and his attackers would have an action for either trespass to chattel (through transferred intent of Jim's battery on the skaters by oiling the road) or negligence in making a public road slippery. Facts don't suggest driver was injured, so no battery via transferred intent. A question of whether a reasonable person would think the oiled road would be a risk to vehicles as well as skateboards. Note that either cause of action would require some damages be proven by the car owner. 4 points

Jim and Skaters struck by car v. car driver Negligence Unless the car was speeding and that contributed to the loss of control, no indication the driver was in any way responsible for the car striking Jim and the skaters. 2 points

Deputy Sue v. Jim Battery/Neg Sue's estate has a valid claim for wrongful death against Jim for battery via transferred intent. This intentional tort would not enable them to seek punitive damages, but would also avoid the reduction in the damages awarded by Sue's likely comparative negligence in not wearing a seat belt if her estate sought recovery only by a claim of negligence. 4 points