

Torts Final, Summer, 2018
Professor Stogner
Question 1

Issue Outline

Peter v. Dontools, Inc.

Products liability

- negligence (in failing to maintain safeguards respecting the manufacturing process)?
- breach of express warranty ("won't fire with the safety on")
 - issue of reliance: most jurisdictions require it; no evidence that plaintiff relied.
- breach of implied warranty of merchantability (should only fire when user's intent is to fire)

- manufacturing defect (screw inadvertently left out of the nailgun)

Defamation

--Dontools, Inc. Peter called "mentally ill". Other statements may have been non-defamatory opinion.

False Light

--calling Peter "mentally ill", if it is not injurious to reputation, could certainly place him in a false light.

Dontools, Inc. v. Peter

Defamation

--a corporation is a person and can be defamed. Writing that all its products are always defective could be defamatory.

Injurious Falsehood

--writing that all its products are defective all the time constitutes injurious falsehood because the intent was to injure economic prospects and the corporation did suffer a 5% drop in business for six months due to the ad.

Abuse of Process

--deposition strategy appears to vex rather than constitute legitimate discovery activity.

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Question 2

Issue Outline

Penny v. Dave

--malicious prosecution (no probable cause, favorable termination following the arrest)

--strict liability (for the ferret injury, in jurisdictions viewing the ferret as a wild animal)

--negligence in failing to control/properly restrain the ferret, although with no knowledge of any violent predisposition, assuming the leash restraint was reasonable, Dave may argue (probably unsuccessfully) that he breached no duty of due care.

Intrusion

--Dave positioned himself in a nearby tree and used a telephoto lens to photograph in a place where Penny had a reasonable expectation of privacy.

Dave v. Penny

Interference with Contract

--this may depend, in some jurisdictions, on whether Willie was an at will employee with no contract committing him to future employment.

Interference with prospective economic relations

--did Penny commit a "wrongful act" in the process of enticing Willie to come work for her?

Battery

--Penny struck Dave on purpose, but she may have been acting in reasonable self-defense, even though Dave's true intention was to help her.

Trespass to Chattel

--Penny killed Dave's ferret with a shovel. The facts don't indicate she did so with any privilege.

Negligence

--Willie was in the scope of employment with Penny's company when he carelessly struck Dave in the cross walk. Penny would thus be vicariously liable for the injuries Dave suffered under the respondeat superior doctrine.