

Blue Book

NAME _____

SUBJECT Intro to Law

INSTRUCTOR Lozada

EXAM SEAT NO. _____ SECTION _____

DATE 12/15/2011 GRADE _____

24

A BIT CONCIOUSLY
W/ SOME ELEMENTS
BUT SPOTTED MAIN
ISSUE -
"ADVOCATION"

10^{7/8} x 8^{1/4}

50 - 16 PAGE

PART 1A 10 PTS
PART 1B 9 PTS
PART 2A 5
24

In the case of Post v. Winkler, Jenna

Post was playing at friend Stacy Winkler's.

Jenna and Stacy were playing a game of

"case and tag" and Winkler's dog, ~~a setter~~ ^{was peacefully}

sitting in ^{the} corner of the yard. Jenna ran

from Stacy and tripped and fell ~~out~~ on the dog.

While trying to get away, the dog scratched

Jenna's eye. Jenna had to have surgery to

fix her cornea, and although it is supposed

to heal over time, she still cannot see clearly.

Jenna's parents brought action against

Winklers under the "New Brittany "Dog Bite"

statute. Trial court rules in favor of plaintiff, Post.

FACTS

ADVERSE

It must be determined whether the ^{§ 55-4} dog bite statute applies to the case and 1 and whether the owners are thus liable for ~~the~~ plaintiff's injuries.

~~the~~ a) To determine if defendant is liable for plaintiff's injury, the New Britain "Dog Bite" statute (NB statute, title 4, section 117) must be ~~examined~~ examined. ~~That~~ the statute^R states, "If a dog, without ¹ provocation, attacks ² or injures a person... the owner is liable in ^R damages..." (NB Rev. Stat. Title 4, Section 117, 2010).
↳ missing elements

~~As argued in trial court by plaintiff Thus~~

~~the~~ dog ^{is not} ~~must be~~ provoked, ~~there~~ the defendant ^{2 main issues}
~~must be~~ can be liable for the damages caused. ^{10/10}

While playing a game of "chase and tag" although Jenna did trip and step on ^A
the dogs tail, she did not do so intentionally. ^{Good points BUT TELL THE WHY!}

~~falling~~ ^{For if} ~~because~~ the dog ^{is} to be left around
young children, it should be ~~is~~ safe ^A

for the children to play around the
animal. If the dog becomes unsettled

at Jenna merely tripping on the tail,
unintentionally it should not have been ^A

left outside with the children in the first ^{10/10}

place. Thus it is the responsibility of the owners of

the dog to only allow the dog around the children

if they are ~~to~~ certain it will not become

Public
Policy
Analysis

unsettled by the normal, scattered, loud, type

of play that children are known to engage

in. ~~that~~

Good
Use of CASE LAW ✓

~~Addin~~ Additionally the case of Pillars v.

Saint (1978) 23 NB App. 2d 451

as shown from the analysis above, the

four elements necessary for liability ~~of~~ under

the "Dog Bite" statute have in fact been

Good
ANALYSIS

met. Injury was caused by defendant's

dog, Jenna did not intentionally provoke

the dog. She was acting and playing as

③
"Peacefully" as children are expected to play
and Jenna also had a ⁴⁻ right to be ^{an example} at her friends house. ^{discussed} ^{but conclusion}

Further proof that illustrates the liability
of the defendants is found from ^{the of} case Johnson
v. State Farmers (1985) 21 NB App 3d 105. ^A

This case, as ^{also} interpreted by the trial ^{Good} ^{is not} ^{relevant}
court ~~the~~ gives the definition of ^{parents}

"provocation". The ^{court} ~~the~~ claims provocation
occurs from "deliberate act on part of ~~R~~
the actor" and Jenna's tripping on

the Dogs tail was not deliberate

in the least. ^{MAIN POINT} ^{of this} ^{Argument}

Conclusion

Therefore judgement of trial courts affirmed
in favor of plaintiff.

10 PTS

B.) ^{9 PTS} ~~to~~ In the case of Post v. Winkler

We have a young girl who is injured by

her friend's dog. In the trial courts, ~~she~~

FACTS
NO REASON

defendants were found to be liable

for the injury ~~because~~ ^{for a few reasons.} ~~to~~ ~~the~~ Trial

court claims that defendant did not

DS MAIN POINT

intentionally provoke the dog and thus as required from the New Brittany "Dog Bite" Statute (NB Statute, title 4, section 117) the defendants were thus liable for ~~here~~ injury. Today ~~were~~ and their reasoning lacking.

The trial court uses ~~a case~~ an ^{Legal} analogy from a case regarding self defense to define "provocation" under the New Brittany "Dog Bite" Statute (NB statute, title 4, section 117). This analogy simply does not work. ~~Defendant~~ _{Belmont} ↓
Defending oneself from a person who

Good point.

going to attack you is completely different
from the normal reactions an animal

A

is likely to have due to someone stepping
on them. Although Jenna may not have

GOOD ANALYSIS

intentionally provoked the dog, the
"dog bite" statute does not state that
"intentional" provocation is necessary.

GOOD POINT

Comparing this case of a dog bite to
that of self defense is ^{simply} ~~not~~ _{not} ~~comparable~~

← NOT-DISTINGUISHED?
START USING
THOSE TERMS

comparable. Because Jenna did step
on the dog, who was otherwise
minding his own business, she

A

did provoke him as far as the

definition of the statute states. Additionally Jenna, by playing "chase and tag" was not acting "peacefully" and ^{good} ^{ANALYSIS} was creating commotion.

~~The~~ The dog also did not intentionally harm Jenna. The dog did not bite ^{public policy} her, as is assumed from the A statute, ~~the~~ The dog scratched her in the eye because he was trying to get away. ^A

Thus we reverse the decision C of the trial court and rule for the defendant. They are not liable.

Q. 2. /
Q. 2. /
5 pts.

2a) If a dog, without intentional provocation
~~attack~~
by the injured person; ^{or any people around them} attacks or injures.

any person who is peacefully conducting
themselves the owner is liable.