Torts Final Exam

Prof. Pi • Fall 2023

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Instructions

- Read the fact pattern and precedent cases. In your answer, construct arguments for all potential plaintiffs and all potential defendants in the disputes arising from the fact pattern.
- You may assume that the relevant legal sources for this jurisdiction are:
    - The precedents provided.
    - Any case assigned during the semester.
    - Restatement (Second) of Torts.
    - Restatement (Third) of Torts.
- An "argument" consists of a major premise, minor premises, and a conclusion.
- Each argument you construct is worth one point.
- Fractional points may be awarded for defective arguments.
- Duplicative, trivial, and redundant arguments will not be awarded points.
- This exam is open-book / open-internet.
- **Use of ChatGPT (or other language models) *is* permitted on this exam.**

Fact Pattern

On December 1, 2023, the Tilton Organization for Research & Technology held their annual "technology fair" at Pleasant Gardens, a privately owned park in Tilton, NH. The event aimed to promote science education and stimulate interest in technological advancement, drawing attendees from across New England.

Several exhibits were planned. Microsoft was expected to announce the revival of their Zune music player. Tesla was anticipated to unveil an electric "monster truck." And Boeing, Lockheed Martin, and Northrop Grumman were slated to demonstrate their latest advancements in aerial drones in a joint exhibition. The drones on display were to be examples of units which had been purchased by various branches of the United States military.

The main attraction of the event was anticipated to be the demonstration of Reality 2.0, a giant OLED display, one half mile in length, encircling the western half of the fairgrounds, which would simulate a pastoral backdrop for the event. Reality 2.0 was developed by Basefook, a virtual reality startup. Mike Suckerberg, CEO of Basefook, was expected to be onsite to supervise the demonstration.

Upon opening the fairground gates, throngs of technology enthusiasts entered Pleasant Gardens. Fairgoers were immediately awed by the lifelike vista displayed on Reality 2.0, featuring rolling hills dotted with herds of grazing sheep. Local television news stations were soon declaring that Tilton was set to become "New England's Silicon Valley." By ten o'clock, the venue had reached its maximum capacity of 4,000 persons.

Unfortunately, the proceedings later took a darker turn. By late afternoon the simulated images of grazing sheep had attracted the attention of wolves, which had recently migrated south from Canada. The wolves approached the fairgrounds undetected. Their coordinated attack commenced swiftly. Pandemonium ensued. Fairgoers fleeing for the gates found their exit blocked by ambushing wolves.

One unusually intrepid canine leapt into the air, attempting to bite an aerial drone. The drone's automated self-defense protocol identified the lunging wolf as an "enemy aggressor." The drone's manufacturer—Boeing—had neglected to instruct its operator—an Air Force technician—to manually disable the automated self-defense protocol prior to use. Switching to autonomous operation, the drone deftly avoided the wolf while launching a missile at the hapless beast, instantly vaporizing it. The drone then rotated, locking onto another drone—the unit produced by Lockheed.

The second drone detected the lock-on, alerting its operator—an Army officer—of the threat. He engaged the craft's jamming countermeasures, designed to disrupt an enemy targeting system's ability to maintain a lock. However, due to faulty wiring, the Lockheed drone failed to deploy its jamming countermeasures. Instead, it fired its napalm cannon, engulfing the Boeing drone in flames. The Boeing drone fell to the ground inert.

Alarmed by the foregoing events, the operator of Grumman's drone—a Navy pilot—initiated the drone's autonomous escape protocol. The drone immediately rocketed out of the park, flying at low altitude to avoid radar detection. Cruising over the rooftops of Tilton, the aircraft passed perilously close to a resident, Bert Van Dyke, who was setting Christmas decorations atop his house. Startled, Bert tumbled off his roof, breaking his leg. His medical expenses would total $4,500.

Unfortunately, the Grumman drone's sensors were not designed to detect objects smaller than six inches in diameter, and it failed to avoid a suspended power line. The force of the drone pulling on the line caused the utility pole bearing it to crash onto the street, and electricity service was interrupted for a nearby laundromat. The laundromat would later estimate that the loss of power resulted in $1,500 of lost profits.

Meanwhile, at the technology fair, the event organizers had surmised that the simulated sheep were likely what had drawn the wolves to the park. They informed Mike Suckerberg. He implored the Basefook engineers, "Guys! They're saying this is all *our* fault. This is so not cool. I mean, we've got to fix this. Ideas? Anyone? Come on, guys. This sucks. What? Who said that? I want to know who said that. Someone said that I suck. Seriously? I mean, are you like actually serious? You're so fired—whoever you are. When I find out who said it, I'm going to rain hellfire down on you. That's right. Wait a minute. I've got it. I know what we've got to do. We've got to *disrupt!* If Reality 2.0 can lure the wolves here, then it can like scare the wolves away!"

Suckerberg commanded his engineers to generate a video image on the Reality 2.0 display depicting the approach of a giant meteor careening directly toward the fairgrounds. Within moments, the sight of an enormous rock hurtling toward Pleasant Gardens appeared on the screen. As Suckerberg had anticipated, the wolves fled for the forest. However, many of the fairgoers also failed to comprehend that the meteor was an illusion, and the chaos further escalated. Dozens of attendees were trampled, suffering severe injuries, as the crowd sprinted toward the exits—no longer guarded by the wolves.

The hysteria continued to escalate until Tod Kaczynski, a rogue anti-technology activist "performing reconnaissance," emerged from the crowd, wielding a shotgun he had secreted onto the fairgrounds. He sneered with contempt, "You fools! You were warned, and you were warned. You wrought upon ye selves these cursed adding machines. Behold the folly of your so-called technology!" He then pumped his weapon and blasted the Reality 2.0 panorama with several shots. The screen went black. The panic soon subsided. It would cost $3 million to repair the damage to the Reality 2.0 screen.

Emergency medical crews were summoned. An ambulance, turning onto the street with the downed utility pole, swerved onto the sidewalk to avoid the unexpected obstruction. The ambulance collided with the front door of the laundromat, which had earlier lost electricity service—causing a small dent on the front door.

In total, seven attendees were injured by the wolves. Their combined medical expenses were altogether $100,000. Six hundred attendees were significantly injured during the stampede, resulting in combined medical costs totaling $2 million. Boeing's drone, which was worth $15 million, was damaged beyond repair. Lockheed's drone, which was worth $20 million, was unharmed. Grumman's drone was salvageable. The cost of repairs was $500,000.

Precedent Cases

Huygens v. Leibniz, 31 N.H. 415 (1962).

It was established at trial that Bob Hook falsely told defendant that plaintiff had seduced Newton's wife. Defendant had good reason to doubt this information. He nevertheless relayed the rumor to Newton. Newton was thus enraged, sought out the plaintiff, and administered a brutal beating upon him. Plaintiff alleges that the defendant was negligent in perpetuating the lie, thus causing the injuries he suffered at the hands of Newton.

Defendant argues that he was not the cause of plaintiff's injuries, because that injury was inflicted upon him by Newton—an independent third party. That event, he claims, supersedes. We cannot agree. Newton was, at the moment of violence, in a rage. His conduct, if voluntary, was so near to the precipice of involuntariness, that we think it not properly the product of conscious deliberation. The lodestar of proximate cause is foreseeability. This ultimately is the crux of the issue. Although Newton's actions were unreasonable, it would have been reasonable for any man thus situated to lose his sense of reason. It was, in short, *reasonable to be unreasonable*. What man would, upon learning his mate's honor and his own dignity had been thus besmirched, not seek his vengeance? I think no man. It was a wholly foreseeable consequence of the defendant's negligence that plaintiff was injured.

Yet we think the defendant is not solely to blame. Evidence produced at trial tended to demonstrate that the plaintiff had oft given the impression of intimacy with Newton's wife, which would offend the propriety of any honorable man. He ought thus bear some portion of the blame. We therefore remand the case for a determination of comparative negligence, as is the rule in our jurisdiction. Whatever share of the blame may be attributed to the defendant, so much should he compensate the plaintiff.

Jefferson v. Adams, 40 N.H. 30 (2020).

It was uncontested at trial that Adams barreled past the stop sign, despite Jefferson having the right of way. Jefferson slammed on his brakes, coming to an abrupt halt and averting a collision. At trial, Jefferson called several expert witnesses, who testified that if Jefferson's car did not have an electronic brake force distribution (EBD) system installed, then it would be a practical certainty

that the two vehicles would have made contact. Although Jefferson's vehicle suffered no damage, Jefferson nonetheless sued Adams on the theory that RESTATEMENT (SECOND) OF TORTS §919(1) is applicable.

> §919. HARM SUFFERED AND EXPENDITURES MADE IN EFFORTS TO AVERT HARM.
>
> (1) One whose legally protected interests have been endangered by the tortious conduct of another is entitled to recover for expenditures reasonably made or harm suffered in a reasonable effort to avert the harm threatened.

Jefferson contends that his investment in an EBD system prevented the potentially catastrophic collision. He therefore seeks to recover the difference between the cost of his vehicle and the cost of a similar model without an EBD system.

Adams contends that the EBD system was not installed to avert the specific risk of harm of his tortious conduct. Rather, Adams argues that Jefferson installed the system to avert the entire class of harms which an EBD system would ameliorate. Therefore, the EBD system was not a "reasonable effort to avert the harm threatened."

It is eminently plausible that Jefferson did not intend the EBD system to avert the *specific* risk that Adams imposed. How could he have predicted, when purchasing his vehicle many years prior to the incident, that Adams specifically would run the stop sign? However, we think it is immaterial whether he intended to avert the specific harm. Intention is not an element of §919. The fact that he incurred a reasonable cost, which would reasonably avert the counterfactual accident suffices. Adams is liable for the cost of the EBD system. Reversed and remanded.

Wagner v. Brahms, 35 N.H. 46 (2000)

The plaintiff suffers the great misfortune of residing in a property adjacent to a golf course. For many years, she has daily suffered the pelting of her home by errant golf balls. She has three times had to replace her living room window at a cost of $2000. On each occasion, the golf club was held liable for failing to install barriers to prevent such occurrences.

In July of 1999, the plaintiff erected an elaborate lawn sign expressing support for presidential candidate Ralph Nader. This was no ordinary lawn sign. It was raised ten feet above

the ground, and stretched fifteen feet from edge-to-edge. The plaintiff hired a crew of three contractors to build the sign. The construction required a full day of labor. The cost of erecting the sign was altogether $750.

Subsequently, the plaintiff noticed that the sign had the serendipitous effect of shielding her window from the flight of badly hit golf balls. She noted three dents where balls had obviously struck the sign. She called two physicists and a geometer as expert witnesses, who testified that given the distance from the tee and the location of the dents, all three dents would have smashed her window if the sign had not been there.

Plaintiff sought to recover for "expenditures made in efforts to avert harm." RESTATEMENT (SECOND) OF TORTS §919(1). Specifically, she sued for the cost of installing the sign, arguing that it was a "reasonable expenditure" made "in a reasonable effort to avert the harm threatened." We cannot agree. The purpose of the sign was to express the plaintiff's political support for Ralph Nader. She offered no evidence that the sign was intended to block golf balls from striking her window. Indeed, she admitted at trial that the protective function of the sign "was an unexpected side effect," and that it was "a blessing from Brother Nader."

There is no sense in law or equity in allowing plaintiff's case to proceed. The trial court rightly dismissed the claim. An expenditure cannot be a "reasonable effort to avert the harm threatened," if the expenditure was not even intended to avert the harm threatened. Affirmed.

Godard v. Herzog, 5 N.H. 6 (1878).

Plaintiff contends that he was the victim of a battery. The defendant does not dispute that he kicked plaintiff. However, the defendant argues that the requisite element of intent was not present in this case. Defendant testified, "I was right annoyed at the yapping of his goddamn dog. And so I thinks to me self, a swift kick would shut it right up. So that's what I aimed to do. I was aiming for the dog." The defendant missed the dog and struck the plaintiff instead.

The plaintiff argues that intent may be inferred under the doctrine of "transferred intent." That is, the intent to kick the dog should suffice for the intent to kick the plaintiff. The defendant counters that his intent was not to kick a person, and our doctrine of transferred intent applies only to persons and not to chattel.

We are not aware of any like case in our law. This dispute thus represents an issue of first impression. We cannot condone the willful mistreatment of animals. So much the less those faithful

companions, whom so many of our people regard as practically kin. It would be a cruel formalism to insist that the destructive actions of would-be animal abusers escape account, merely because their target happened to have four legs rather than two. We hold that our doctrine of transferred intent should apply no less to the battery of non-human animals than to the battery of persons.

The defendant counterclaims that the plaintiff, enraged by the affront, then struck him hard upon the face. The plaintiff does not deny his action. Rather, he too asserts the absence of intent. He claims that he was so incensed by the attack upon his pet as to lose command of all reason. We sympathize with the plaintiff's circumstance, and we think his response quite reasonable. Yet it is a logical contradiction to maintain that unreasonableness should be a reasonable response. The law cannot bear it, and the plaintiff's counterargument must fail. Both parties are therefore liable to the other for their respective batteries. Affirmed in part.

Wright v. Pei, 33 N.H. 494 (1973).

Plaintiff Wright alleges that he was the victim of a battery. Prior to the incident in question, defendant Pei had obtained a photograph of her employer, Erol Saarinen, which she manipulated in such a way as to depict Erol as Benito Mussolini. She then posted the photo in the employee break room.

When Saarinen discovered the altered photograph, he became hysterical. Witnesses reported that he removed his shoes and shirt while screaming obscenities. He then proceeded to punch himself repeatedly, muttering, "They all hate you. They hate you, Erol. What more proof do you need?" It was at this point that Wright entered the breakroom.

Laughing maniacally, Saarinen struck the wall repeatedly with his shoe before declaring, "I despise that cabinet!" He threw his shoe forcefully at a metal filing cabinet. The shoe missed and struck Wright in the mouth, causing him to lose two teeth. Wright sued both Pei and Saarinen.

Saarinen argues that he did not have the requisite intent to commit a battery. Although he concedes he caused the shoe to strike Wright, he maintains that his intent was merely to hit the cabinet. Wright contends that the doctrine of transferred intent applies. Wright is mistaken.

The doctrine of transferred intent allows a defendant's intention to commit a tort against one person to stand in for intention to commit the same tort against another. However, Saarinen was not intending to commit *any* tort. One cannot intend to commit a "battery" against an inanimate object. They are not "victims" within the domain of battery.

Pei argues that she was not the proximate cause of Wright's injury. Specifically, she contends that Saarinen's unpredictable behavior supersedes. She is correct. The behavior of a madman is unquestionably "unforeseeable" within the meaning of the law, and no reasonable person could have predicted that Saarinen would react to the satirical photo as he had. To claim that the behavior of a man undergoing a psychotic break is in any sense "foreseeable" would be to stretch the semantics beyond all recognition. As we remarked in *Godard*, the "law cannot bear it."

We sympathize with plaintiff's plight. However, misfortunes abound, and it is not the purview of the tort law to remedy every harm suffered. Neither Saarinen nor Pei were responsible for Wright's injuries. He must unfortunately bear those costs alone.