

Gerla
Torts I
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Question I (60 Points)

World famous artist Pablo Pickle ("Pickle") was upset when his studio was burglarized several times. Pickle kept art worth millions of dollars. In addition Pickle kept a cot in the studio for those times (about three or four days out of every month) when he would go on a work binge and sleep overnight in the studio.

Pickle was tired of the burglaries and decided to take matters into his own hands by setting up a device in the hall leading up to the room where he kept his art works. The device consisted of a loaded and cocked crossbow trip wire. The very night Pickle installed the device T. Katt ("Katt") broke into the studio. Pickle was not in the studio at the time of the break-in. Katt's intention was to steal the millions in art works in the studio. Under the laws of jurisdiction such a theft constituted the felony of grand larceny.

As Katt advanced down the hall he tripped the wire connected to the device. Fortunately for Katt he lost his balance when he tripped over the wire and was only wounded in the left leg by the arrow when the crossbar discharged. Had he been standing upright he would have taken the full force of the arrow in his midsection and been run through.

Katt limped out of the studio and was met outside by a police officer, Detective Michael Belker ("Belker") who happened to be passing by the studio at the time. Belker was on his way back to the station from his latest assignment--acting as a decoy in an effort to catch the "skid-row slasher." Thus, Belker was dressed and looked like a typical

skid-row derelict. Belker identified himself to Katt as a police officer and grabbed him. Katt resisted arrest and struggled fiercely against Belker. In an effort to subdue Katt, Belker began to pound and bite him. At this point Paul Passerby ("Passerby") happened by. Katt called out to Passerby, "Help me! I'm being mugged!" Passerby cried out to Belker, "Stop! What are you doing?" Belker, instead of identifying himself as a police officer, continued to pound and bite Katt and yelled out to Passerby, "None of your [expletive deleted] business, dog breath." Passerby then grabbed an empty metal garbage can and hit Detective Belker over the head with it. Belker was stunned and Katt began to limp away when he was apprehended by police reinforcements. Officer Belker suffered a gash on his head requiring several stitches to close, and headaches which lasted several days, but otherwise suffered no permanent damage or serious injury.

Katt is now suing Pickle for the injuries the arrow caused to his leg. Detective Belker is suing Passerby for the injuries he suffered from the garbage can. Discuss (a) the possible tort liability of Pickle for the injury to Katt's leg and (b) the possible tort liability of Passerby for the injury to Detective Belker's head.

N.B.: For purposes of this question you are to assume that Detective Belker was using only lawful force in arresting Katt and that Katt had no right to resist arrest.

Question II (60 points)

S. L. Mazel ("Mazel") was walking on a public sidewalk by the city-owned Louise Gray housing project when he was struck and killed by a chunk of concrete thrown from a third story hallway window. The person throwing the concrete was the teenaged son of one of the tenants.

The incident which killed Mazel was not the first such incident. In the past two years at least five people had been splashed by water, used motor oil or other even less pleasant liquids thrown from hallway windows. In addition, heavy objects had been thrown from hallway windows on at least three occasions in the past two years. However, no one had been injured in these incidents. The city's Metropolitan Housing Authority, which ran the development, was notified of all the incidents. In fact, a memorandum from the manager of the development to the members of the Housing Authority warned them that "someone could get hurt if something is not done about the problem of kids throwing things out of hallway windows." Despite this the Authority took no action.

Mazel's survivors have now sued the Metropolitan Housing Authority alleging that the Authority was negligent in not placing sturdy and secure wire screens on hallway windows. Such a screen would, of course, have prevented a large object from being hurled from the window.

Mazel's survivors, in addition to establishing the above facts, introduced into evidence a decades old but still valid state statute which required all city-owned housing developments to place secure screens on all hallway windows above the second floor. The law was passed specifically as a response to several incidents in which very young children wandered away and fell to their deaths from hallway windows.

The Housing Authority countered by introducing the testimony of public housing experts who testified that no public housing project built in the last twenty years had secure wire screens on hallway windows. The experts stated that the reason for the lack of wire screens was that such screens gave a public housing development the atmosphere of a prison or mental hospital and depressed the already low morale of the tenants. According to those experts, this lowered morale led to a lack of tenant efforts at upkeep and

a general lack of community cohesiveness and security.

Housing Authority officials also testified that putting screens on hallway windows would force the Authority to raise rents approximately five dollars per month per tenant. The officials admitted that this amount might not seem like much, but that it "might" work a particular hardship on elderly tenants living on social security.

Assuming the above facts can be established, discuss the possible liability of the Metropolitan Housing Authority to Mazel's survivors.

Question III (60 points)

Dr. Sam Shrink ("Shrink") was the advising psychologist to the parole board at the state prison. Shrink's job was to administer psychological tests to prisoners coming up for parole and to prepare a written report of his findings for the board.

One day Shrink had two reports to prepare for the parole board. One report was on Malcolm Meek, ("Meek"), a convicted embezzler. Shrink's report on Meek indicated that he had a well-integrated and stable personality and seemed to be completely rehabilitated.

The other report was on Tex Manson ("Manson") a convicted armed robber. Dr. Shrink's report on Manson was quite different from that on Meek. Shrink report indicated that while Manson seemed to be cooperative and to give all the "right" answers he still harbored a great deal of deep-seated resentment toward society. Shrink also concluded that he detected a possible tendency toward violent outbursts and fits of temper by Manson.

After Shrink completed any report he prepared he labeled

it with the prisoner's name and identification number. This was the only way the parole board had of identifying the reports. Shrink was labeling the reports on Meek and Manson when he became engrossed in a football game he was watching. In fact, Shrink was so engrossed that he mislabeled the reports. Thus, Meek's report was labeled as Manson's report and vice versa. Shrink then forwarded the mislabeled reports to the parole board.

The parole board never saw the report labeled "Meek" (in reality the report on Manson) because Meek died before his case could come before the board. The board did, however, see the report labeled "Manson" (in reality the report on Meek) when it considered Manson's request for parole. In its consideration the board also took into account the nature of Manson's prior offenses, his prison record and Manson's personal testimony before the board. The rules of the board required that four out of its five members vote in favor of parole before a parole could be granted. Manson was granted parole on a four to one vote.

Two of the four members of the board who voted for Manson's parole said that Shrink's reports never had any influence on them and that they never paid any attention to anything Shrink wrote or said. The remaining two members of the majority stated that "their votes might have been different" if they had seen the correct report on Manson.

Manson had not even been out of prison for a day when he decided to make with "a big score." Manson illegally purchased a gun and attempted to kidnap at gunpoint liquor magnate Harvey Wallbanger ("Wallbanger") as he left his office.

Wallbanger resisted and tried to wrestle the gun away from Manson. During the ensuing struggle the gun discharged and seriously wounded Wallbanger. Manson fled the scene with

his gun but was soon cornered by police and killed in a shoot-out.

Wallbanger has suffered severe injuries (including permanent paralysis) and is now suing Dr. Shrink. Discuss the possible tort liability of Dr. Shrink.