

Gerla  
Torts I  
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Question I (200 points)

The Earl's Court Shopping Mall was a new enclosed shopping center located in the East End neighborhood of the city of New London in the State of East Virginia. The East End was a very poor neighborhood characterized by low income levels, high crime rates, high unemployment rates and deteriorating housing. Another problem for the neighborhood (at least prior to the opening of Earl's Court) was a lack of neighborhood shopping. The East End had very few stores and those stores that were located in the neighborhood were characterized by poor quality merchandise, high prices and short hours of service. This situation was a particular hardship on those who were unable to go to other areas to shop because of physical infirmity or lack of transportation. This unfortunate situation changed radically with the opening of the Earl's Court Shopping Mall.

The Earl's Court Mall ("the Mall") brought stores to the neighborhood which carried quality merchandise at affordable prices and which stayed open at times which were convenient for the residents of the neighborhood. Moreover, other businesses were beginning to make plans to open in areas around the Mall. Beyond these tangible benefits, the Mall brought another intangible benefit to the East End--it greatly boosted morale in the whole neighborhood. The presence of the Mall brought a new sense of pride and energy to the entire neighborhood.

Late one summer evening Alma Smith was shopping at a department store in the Mall. Ms. Smith shopped at the store till just before it and the Mall officially closed for the evening at 9:30 p.m. After paying for her purchases, Ms.

Smith exited the store and went out through the front entrance to the Mall. There, Ms. Smith ran into some of her friends and they soon got into a conversation. The scene was not unusual because conversing at the Mall had become something of a tradition for older citizens of the East End who shopped at the Mall on summer nights. The conversation among Ms. Smith and her friends ended around 10:15 p.m. Ms. Smith began walking to her car which was parked in the Mall's parking lot. As she walked to her car, she began to worry because there had been several muggings in the parking lot on recent evenings. She reached her car and had begun to relax when she was confronted by several youths. The youths demanded money from her, Ms. Smith handed over all the money she had to them, and when the youths saw the meager amount, they became infuriated and brutally beat Ms. Smith severely injuring her. The youths who robbed and beat Ms. Smith were never captured.

Ms. Smith has now sued the owner and operator of the Mall, (and of course its parking lot) the Earl Company, claiming that it was negligent in failing to provide adequate security for the Mall.

At trial, both sides presented numerous witnesses. The plaintiff presented an expert witness in the form of a professor of criminology at a local university who stated that had the Mall provided two full-time professional security officers from 9:00 a.m. to 11:00 p.m., the criminals who victimized Ms. Smith would, in all likelihood have been deterred from committing their crime. The professor went on to testify that based on his and others' studies the presence of two full-time security officers would, over a five year period, deter crime which would otherwise lead to 75 robberies of patrons, 30 minor injuries, 5 serious injuries and one death. In addition, the presence of the officers would deter numerous acts of theft and vandalism involving cars parked in the Mall's parking

lot.

The defendant's officers and accountants testified on behalf of the the defendant. They stated that maintaining two full time professional security officers on the premises at the times plaintiff suggested would cost the mall close to a million dollars per year. The plaintiff did not dispute this figure. The defendant's officers and accountants then went on to testify that the Mall was barely breaking even at this point and that the added expense of providing the officers would force the Mall to close.

The plaintiff in rebuttal to the testimony of the defendant's officers and accountants presented testimony by an independent business consultant who had expertise in the economics of retailing. The consultant testified that the defendant's officers and accountant were taking a short-sighted view of the costs of boosting security. The consultant agreed that in the short run boosting security would cost the defendant almost a million dollars per year. However, the consultant went on to say that in the medium and long run increasing security would increase profitability of the Mall by generating increased shopper traffic at the Mall and that failing to increase security might, in the long run, kill the Mall by destroying shopper confidence in their personal safety while at the Mall.

In rebuttal to the plaintiff's expert witness/ criminologist, the defendants presented their own expert witness on security, a retired high ranking police officer who was now a distinguished independent consultant on Mall security and police practices. The defendant's expert witness on security testified that the plaintiff's witness was simply wrong when he testified that utilizing two security officers would reduce crime at the Mall. The defendant's expert testified that the studies on which plaintiff's witness relied involved shopping centers in

upper and middle income areas with low to moderate crime rates rather than poor areas with high crime rates. The defendant's expert also testified that based on his experience with the type of criminals who operated in such areas, they would be unlikely to be deterred from committing crimes at the Mall by the presence of professional security officers.

Discuss the possible liability of the Earl Company for negligence in allegedly failing to provide adequate security for the Earl's Court Mall.

### Question II (100 points)

Fred Witte and Manny Ax were veteran construction workers at the remote Pine Dam construction site. Like the other workers on the project, Witte and Ax lived right at the site. When not working, the workers on the project had relatively little to do to amuse themselves. One of the diversions the workers turned to for amusement was gambling. Soon they became bored with the straight gambling and decided to amuse themselves by staging prize fights among themselves with betting on the results and cash prizes for the victors. The fights were very popular among the workers. Witte and Ax were among the most frequent and enthusiastic participants in the bouts with Ax being the unofficial champion of the fights in the camps.

One evening, Witte approached Ax and asked him if he was interested in fighting that evening. Ax indicated that he did not care to fight with Witte that evening. Witte then told Ax that if Ax would agree to fight him, Witte would give Ax a bottle of very old very fine Scotch whiskey which Witte had been saving. This was a complete lie. Witte had no such bottle of whiskey and had no intention of giving Ax a bottle of Scotch whether Ax fought him or not. Ax said, "just for the bottle of whiskey, I'll fight you tonight."

The match was arranged and the contest began. When Witte and Ax began fighting, Witte noticed that Ax was acting somewhat peculiarly in that Ax did not throw any punches which was not consistent with his usual aggressive style of boxing. Also, Ax seemed content to fight defensively by dancing around and avoiding contact. Again, this was totally inconsistent with Ax's usual style of fighting. Witte started to become frustrated and shouted to Ax, "C'mon lets cut out this [expletive deleted]." Ax wished to discontinue the fight. He therefore shouted back "OK, you're right, this is just a bunch of [expletive deleted]." and lowered his guard by dropping his hands from in front of his face. Witte, did not realize that Ax no longer wished to fight, and seeing a rare opportunity to score a blow against the more skilled Ax, hit Ax with a tremendous right which broke Ax's jaw.

Ax is now suing Witte for battery. The state does have a criminal statute making it a crime to stage unlicensed prize fights. Discuss Witte's possible liability to Ax for the tort of battery.