

Gerla
Torts I
Fall 1991

Question I

Frank Rust was employed at Ed's Warehouse. The workers at the warehouse were a rough and tumble lot. They constantly played jokes on each other such as dumping buckets of water on each others heads, grabbing each other, and jumping on fellow worker's backs (the last was called "playing horsey"). A new employee, Art Milo, came to work at Ed's Warehouse. Milo seemed to be a quiet loner, and did not participate in the jokes and horseplay. One day, while the workers were on a coffee break (a favorite time for jokes), Rust and some fellow workers spied Milo standing alone. Rust suggested that he would like to jump on Milo's back, i.e. "play horsey" with him. Rust's fellow workers suggested that Milo might not appreciate that because he was so quiet.

Rust admitted that they might be right, but ultimately came to the conclusion that he did not believe his fellow workers. He believed that if he jumped on Milo's back, it would make Milo feel welcome at the warehouse, and make him "feel like one of the guys instead of an outsider." Rust crept behind Milo's back and jumped on him to "play horsey." Rust caught Milo completely by surprise. Milo toppled forward, and gashed his throat on an exposed piece of equipment.

Milo began to bleed profusely. Indeed, Milo would have bled to death had it not been for quick thinking by a fellow worker, Paul Scott. Scott knew that he would have to apply compression to the wound in order to save Milo. He also knew that application of some type of cloth would be the most effective method of compression. Scott, grabbed the first cloth he could find. That cloth was a scarf, draped around

the shoulders of Eunice Pate, who was visiting the warehouse to arrange for the delivery of some equipment to her company. As Scott grabbed the scarf, Pate shouted "don't you touch me, what are you doing?" Scott paid no attention, but instead, took the scarf and pressed it to Milo's wound. Scott's maneuver was successful. Milo's bleeding was slowed, and his life saved.

Pate was uninjured by Scott's grabbing her scarf. Unfortunately, the same could not be said of the scarf. It was completely ruined by the blood of Milo. This proved particularly irritating to Pate because the scarf was a unique original by the late artist Jesse York and, as such, was worth thousands of dollars.

PART A

Milo is now suing Rust for battery. Discuss Milo's possible liability to Rust for the tort of battery.

PART B

Pate is now suing Scott for battery and trespass to chattels. You are to assume that Pate is able to prove all elements of both torts. Discuss any defenses which Scott may reasonably raise to the torts and the effect of those defenses on Scott's potential liability. Do not discuss the elements of either tort in connection with Part B of this question.

Question II

Special storage facilities are used to store certain explosive and volatile chemicals. Eleven hundred such facilities exist across the United States. All the facilities have what are called chemical fire detection and suppression systems ("CFDSs"). CFDSs are designed to detect

and suppress fires before they can result in an explosion of the stored chemicals. Two types of CFDSs exist. The first type, which is used by 1000 of the 1100 facilities, relies upon conventional heat and smoke detection to detect and suppress fires ("conventional CFDSs"). The second, a newer type, used by the remaining 100 facilities, relies on ionizing radiation to detect the presence of chemicals in the air which would indicate the presence of a fire ("ionizing CFDSs")

Experts are bitterly divided over the advantages and disadvantages of the two types of CFDSs. Conventional CFDSs cost only \$1000 each. Ionizing CFDSs cost \$10,000 each. Experts agree that ionizing CFDSs are more effective at detecting and suppressing fires than conventional ones. However, the experts disagree over how much more effective the ionizing CFDSs are. One group of experts claims that over a twenty year period (which is the useful life of a CFDS) the use of ionizing devices rather than conventional devices will prevent fires and explosions which can be reasonably expected to kill four persons, injure 40 others, and do \$6,000,000 in property damage.

Other experts claim that ionizing CFDSs are not as superior to conventional ones as the proponents of the ionizing variety claim. The supporters of conventional CFDSs maintain that only one death, 10 injuries and \$2,000,000 in property damage could be avoided through the use of ionizing CFDSs in place of conventional CFDSs. They also point out that ionizing CFDSs are subject to more false alarms than conventional CFDSs. These false alarms will, of course, trigger the fire suppression mechanisms leading to the needless destruction of a \$1,000,000 in chemicals over a twenty year period. In addition, hundreds of hours of time and one million dollars can be reasonably expected to be expended in cleaning up from the false alarms. The supporters of ionizing CFDSs do not dispute the nature or

extent of the false alarm problem.

Q Chemical Corporation owns a special storage facility in the City of Metropolis. It is the only such facility in the city. The facility was built in 1979, and has a conventional CFDS. In 1990, the City Council of Metropolis passed a valid ordinance requiring that all special storage facilities within the city limits to be equipped with an ionizing CFDS by July 1, 1991. Metropolis is the only jurisdiction in the United States to have such an ordinance. Q Chemical simply ignored the ordinance, and did not retrofit its storage facility in Metropolis with an ionizing CFDS.

On September 1st 1991 a fire broke out in the Metropolis facility. The conventional CFDS did not detect the fire in time to prevent an explosion. Q Chemical concedes that an ionizing CFDS would have detected the fire in time to suppress it and prevent the subsequent explosion. In that subsequent explosion, a passing motorist, Erica Muti, was severely injured by the blast, whose effects were felt on the streets surrounding the facility. Muti is now suing Q Chemical claiming it was negligent in not utilizing an ionizing CFDS.

Discuss Q Chemical's possible liability to Muti for negligence.

Question III

CVC is a new drug which shows promise of great efficacy against some cancers which are unresponsive to other chemotherapeutic agents. Unfortunately, the drug has some other effects which give rise to serious problems. In some people, the drug produces a euphoric high, much like cocaine and other narcotics. In other people, it produces hallucinogenic effects, much like LSD. Because of its

intoxicant, and hallucinogenic properties, CVC has become a "hot" drug among young people who wish to get high or go on "trips." Persons who have taken CVC have injured themselves and other people while under the influence of the drug. Driving while under the influence of CVC has proven particularly dangerous. Thefts of CVC from research laboratories where it is made or tested have also become a serious problem.

Two teen-aged brothers, Sam and Ralph Nogood, decided that they wished to take some CVC to get high. They planned to get some CVC from a laboratory at Key University. Key University was making a study to see if the intoxicant and hallucinogenic effects of CVC could be eliminated without impairing its efficacy as a cancer-fighting agent.

When Sam and Ralph reached the laboratory at Key University, they found it unlocked. The laboratory was supposed to be securely locked, according to the university's own procedures. However, the janitor who was employed by the university simply forgot to lock the door. Sam and Ralph entered the unlocked laboratory, grabbed some CVC and left the university grounds in their car.

Originally, Ralph and Sam planned to take the CVC themselves to get high. They were, however, beginning to get a little bored with getting high and devised an alternative use for their purloined drug. They decided to see what effect the drug would have on Miles Standish, a classmate of theirs whom they viewed as an "uptight goody two shoes." They hoped it would "loosen up the uptight [expletive deleted]." Ralph and Sam drove to a party which Standish was also attending. Ralph and Sam covertly slipped the odorless and tasteless drug into Standish's soft drink, and watched while he drank it.

Standish left the party and began to drive home. While

he was driving, he suffered a hallucination and lost control of his car. Standish drove his car across the center line and into a field. Miraculously, neither Standish nor his car suffered any injuries. Paul Myers was not so lucky. He was driving his car in the oncoming lane when Standish lost control of his car. In order to avoid a head-on collision with Standish's car, Myers drove his car off the road, into a ditch. Myers suffered severe personal injuries, and his car was heavily damaged.

Myers is now suing Key University for negligence. [N.B.- You are to ASSUME that Key University would be liable to the same extent as the janitor who did not lock the laboratory] At trial, Ralph and Sam give conflicting testimony. Ralph testifies that he and Sam agreed that if the laboratory was locked, they would not risk detection by breaking into and entering the laboratory. Sam testifies that he and Ralph had agreed to break in and get the CVC no matter what efforts it took.

Discuss the possible liability of Key University to Myers for negligence.