

Conte
Torts II
Spring 1994

I.
(50 points - 60 minutes)

Dirk and Spike Liddy run an outdoor shooting range called G-Men in a mixed residential/commercial neighborhood in Arklahoma City, Arklahoma. The Liddys cater to target shooters who use a wide range of firearms including handguns and automatic weapons. As the residential dimension of the neighborhood of the shooting range has expanded, there have been a good number of complaints to the municipal offices of Arklahoma about having a shooting range in a residential environment.

Dirk and Spike run a well-organized and well-monitored operation, High walls surround three sides of the shooting field. Weapons are stored behind a high secure counter. Only members who have passed state gun safety courses for certain kinds of weapons are permitted to use the range. When using the range, a member may be accompanied by adult friends or by members of his/her family over 12 years old. People accompanying members are permitted to observe from benches 20 feet behind the shooting stations.

On Sunday, July 15, 1993, about 8:30 p.m., several shots rang out from inside the range, at least one of which hit the tire of a moving automobile driven by Elisha Erb, an 80-year old man. The shot caused a blowout. Erb's car swerved wildly for fifty or sixty feet and careened into a bicycle being driven by nine year old, Timmy Ladd, who was badly injured. Timmy received serious head injuries causing permanent loss of the use of one arm and severe emotional distress, broken ribs, a broken hip and a broken right leg.

An investigation conducted by Arklahoma City Police discovered that shots were fired from automatic M-1.15 rifles from inside G-Men by 15-year old Dean Autry and 7-year old Ray Rogers. Autry, whose father was a member of the G-Men, had stayed behind after his father had completed his shooting earlier that evening. The Autrys were regular users of the G-Men facilities. When the range closed at 7:30 p. m., Autry had been hiding behind a large sign at one end of the shop. After the range employees had locked up and left for the evening, Autry let his friend, Rogers in, Rogers brought some whiskey, which they drank. They then broke into a case holding M-1.15 rifles, loaded them and started firing, first at range targets, then after opening a window, Rogers started firing at tires.

Timmy Ladd's parents recently hired Jerry Spence of Spence and Associates, of Jaxon Whole, Yoming to represent Timmy and them. Spence has contacted the Liddys to inform them that he considers G-Men and the Liddys wholly responsible for Timmy's injuries. He is seeking \$5 million in damages for the losses of Timmy and his parents.

The Liddys have contacted your firm, Cadiddlehopper and Smythe in order to evaluate their legal situation and to defend them. Clement Cadiddlehopper has asked you to assess the legal position of the Liddys and G-Men and to write a memorandum in which you should (1) determine what claim or claims Spence and the Ladds are most reasonably likely to assert against the Liddys and G-Men on Timmy's behalf; (2) describe what legal principles will most likely be applicable to that claim or claims, and (3) analyze the case in terms of the facts and circumstances as they apply to the applicable legal principles. In your memorandum be sure to point out the strengths and weaknesses of your clients' case, and evaluate their likelihood of success in defending an action that Spence might bring.

II.

(50 points - 60 minutes)

Marsha Scott, a 17-year old Arklahoma high school student, was on a tour of the newly converted Uranus Ultra Automobile Assembly Plant, owned and operated by General Auto, Inc., a major automobile manufacturer. General Auto provides full tours to citizens including high school students at its Uranus Ultra plant. The plant is in the process of converting entirely to robotic-designed manufacturing, and the process and use of robotics would be of great educational interest to citizens and students.

As Marsha walked with her group across a catwalk above a large robotics auto assembly floor, a large over-sized wrenchlike tool flew from three flights above and struck Marsha on the head, fracturing her skull and knocking her unconscious. The tool, called "a grinder", was used to repair heavy machinery that was used in the pre-robotics assembly process.

The use of the tool and the machinery it repaired was being phased out, as were the workers who used it. The tool had been checked out to Bud Clampett, a sixty-year old assembly-line worker. Bud had worked at Uranus and at its predecessor Shevolay plant for forty-two years.

The incident occurred when Bud and several of his co-workers were on their

afternoon break, as they were returning from their break. Bud and several of his co-workers were in the habit of hustling over to the Piston Pit, a neighborhood bar and grille that served the auto workers. At the Piston Pits' bar, Bud would throw back several shots of whiskey and a couple of beers on his break. This routine occurred also at the morning break, at noon and at the end of the day.

In the year since this incident, Marsha briefly regained consciousness once, a month after the incident, made only barely audible groans, and after several minutes slipped back into unconsciousness. Marsha, who was the only daughter and youngest of two children of Clyde and Rosalie Scott, was scheduled to graduate from high school with her class. She had planned to attend Arklahoma University. Marsha was an above-average student and an outstanding high school soccer player, the most valuable player on her school's district championship team.

Clyde and Rosalie have come to your firm, the Azalea Law Firm, in Big Stone, Arklahoma. A senior partner, Hilary Rotnod, has asked you, a new associate, to investigate the matter.

In your investigation, you discover that while the bartender at the Piston Pit does not recollect the particular day of the incident, he does recall that Bud never missed his set ups (having his shots and beers) during the month of the incident in question. He also recalls that Bud and his co-workers often complained about the company and its policy to phase out assembly-line workers, like Bud and his co-workers. You also discover that Bud took early retirement shortly after the incident. One of Bud's co-workers also recalls that on the day in question, on their way back to their job stations, Bud had picked up his grinder, started swearing about the cheap s.o.b.'s and slammed the grinder to the floor, and that he also kicked the grinder against a machine. It then bounced off the machine and over the side. Bud never admitted this conduct, but he was subsequently reprimanded by the company for his failure to properly care for his tools.

General Auto has paid for Marsha's medical treatment to this point, but denies any responsibility for the tragic consequences of that afternoon.

A.

(35 points - 40 minutes)

After your investigation, Ms. Rotnod asks you to prepare a memorandum that describes any claim or claims that might reasonably be asserted on behalf of the Scotts and Marsha against General Auto, (2) that sets forth the legal principles that would apply to the claim or claims, and (3) that analyzes the case of the

Scotts in terms of the relevant facts and applicable legal principles. In analyzing this case, be sure to point out the arguments and strength of the arguments that General Auto is likely to make in response to the claim or claims, or your analysis.

B.

(15 points - 20 minutes)

Further, describe what damages could reasonably be sought against General Auto, the legal principles that would apply to the recovery of such damages, and the likelihood that the Scotts and Marsha would recover these damages, and why.

END OF EXAMINATION