

Scope of Judicial Review Problem

Read this case carefully and prepare a list of issues. Be ready to present a clear discussion of each issue. I will call on several students to indicate their best issues and answers.

On December 1, 1962, the State of Peach transferred all of its highway negligence cases to an administrative agency, the Board of Crashes. The statute that set up the Board provides that the Board had "jurisdiction over all intentional and negligent contacts involving motorized vehicles that result in damages."

The statute further provides that an "aggrieved party may apply to the Peach Court of Appeals to set aside a decision of the Board."

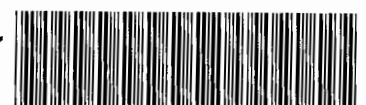
The record from the proceedings before the Board indicates the following:

December 2, 1972, Jacques Strapp broke his ankle in a touch football game. Jacques is the star quarterback for Law 68, the greatly feared para-legal football team of Part-Time University. Jacques was carried to the infirmary where his ankle was placed in a cast. Unable to walk, Jacques rented a motorized wheelchair from the Part-Time University infirmary.

Two hours after Jacques obtained the motorized wheelchair, he decided to go to the Pregnant Pizza for lunch. It should be noted that Part-Time University is located in the center of Mylanta, a large southern city. Jacques testified that as he drove from the curb to the street he watch the "walk light" and the people in the crosswalk carefully. Jacques drove his wheelchair between the white crosswalk lines on the street. The crosswalk was crowded with people, witnesses stated. When Jacques was about half-way across

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the street he heard someone shout "You stupid ass, you just ran over my foot." Looking back, Jacques saw Faye Kerr flailing about on the street and clutching her foot. Expert witnesses indicated during the hearing that Faye had three broken toes. Jacques stated that he was moving at two to three miles per hour at the time of the accident. Some witnesses stated that he was traveling between five and six miles per hour. Faye brought an action for negligence before the Board of Crashes and asked for \$10,000 in damages. The Board awarded her \$3,000 and said:

We find that Jacques Strapp was negligent in the operation of his wheelchair. If Jacques had exercised due care, he would have driven on that part of the street located outside the crosswalk. He would have been looking at the other people in the crosswalk rather than at the "walk" light. His speed of 5 to 6 miles per hour was negligent under the circumstances.

The defendant's argument that the Board lacks jurisdiction over cases involving electric wheel chairs is not well taken. The Peach state rule is that "motorized vehicle" means any wheeled object with a motor, gas or electric. The federal rule is that "motorized vehicle" means any powered means of transportation with wheels. From these holdings it is clear that we are bound to consider cases involving motor driven wheelchairs. The legislative purpose for setting up the agency was to free the courts of vehicle tort cases. Clearly, one confined to a wheelchair does not have a license to commit torts.

Jacques had argued before the Board of Crashes that the most reasonable construction of the statute was to include only automobiles, trucks and motor cycles within the jurisdiction of the Board.

You have just been hired as a clerk for a judge on the Peach Court of Appeals. As he goes in to hear Strapp v. Kerr, he asks, "What am I supposed to do?"

Advise the judge on the scope of judicial review of questions of fact and the scope of judicial review of application of statutory terms to facts. The judge also wants to know how he should decide the case.

Do not discuss: specific provisions of the A.P.A., the constitutionality of the statute or agency, jurisdictional facts or constitutional facts, legislative or interpretative rules. Assume that federal and state rules apply and do not differentiate between federal and state rules.