

Past Exam Essays from 2003, and 2004

Part II. Essay Questions.

Question I. (90 minutes).

Mr. and Mrs. Jones are parents of Amy, age five, and Max, age eight. The Jones also have a dog. Mr. Jones installed a small door in the back door for the dog. This “dog door” allowed the dog to slip in and out without someone having to open the full door. For an additional five dollars, the dog door could have been equipped with a new feature, a buzzer, so that owners of the door who had small children could check to make sure the dog was going out, and not their children. Mr. Jones thought the buzzer was waste of money, no one he knew had one, and he was sure it would drive him crazy.

One evening the Jones left the two children with a 14 year old babysitter, Barbara, a child of a wealthy neighbor. This was the first time that Barbara had taken care of children. The Joneses had never met Barbara, though they knew her parents quite well, and understood that she was usually very responsible. Because she arrived at the house about 20 minutes late, they only had time to instruct her about the bed time hour for the children. After they left, Barbara was joined by her boyfriend. The two became so interested in each other that the absence of Amy and Max was not noted. Amy and Max escaped via the dog door.

The children went over to the adjacent property to play in Baker’s pond. Baker had created the pond by diverting a stream that ran along side his property into his property itself, and into a naturally hollowed out area that probably had been created, at one time, by the stream itself. A water fall occurred at the lowest point in the pond’s banks which regulated the height of the water in the pond. The water from the pond that went over the falls then rejoin the creek bed. The water at the falls went through an opening in the banks.

Baker told the children many times that he did not mind their playing along side the pond, but didn’t want them to throw things into the pond. Baker didn’t want the water dammed up any higher because the water level would rise and potentially put stress on the pond’s other banks.

That evening Baker saw the children enter his property and waved and called to them to be careful and to remember his earlier warnings. Perhaps that put the idea into the children’s head, but in any event, the children decided to see what would happen if they threw other weeds and branches in the pond. The material congregated at a small opening at top of the dam and raised the level of the pond about five inches. After some time the children tired of the play and went back home. Baker did not notice anything unusual about the level of the water.

Later that night, in the vicinity of the Baker pond, it rained harder than it had ever rained in recorded history. It raised the level of the pond an additional 10 inches in an hour. A sluice gate manufactured by Sluice Inc. failed because of a faulty switch. If it had worked it would have diverted the water to a vacant field. The opening for the water at the top of the falls could not accommodate all the additional water. Water from the pond escaped over another bank and as it escaped over the top it washed away some of this bank. The result was a flood of both Baker's house and property, and of a section of another neighbor's newly planted vineyard. The section of vineyard had been planted in violation of a local zoning ordinance. Damage to Baker's property was estimated at \$100,000 and damage to the section of the vineyard was estimated to be about 1 million dollars.

Assume a contributory negligence jurisdiction. Assume the Joneses, Baker, and vineyard owners each own a one million dollar liability/homeowner's policy. What are the rights of: 1) Baker against the Jones parents for his loss? 2) Baker against Amy and Max for his loss? 3) the vineyard owners against Baker, and 4) the vineyard owner against the Jones parents, for their loss? Discuss.

Essay Question II. (45 minutes)

D is an attorney who was consulted by P. P was concerned about his potential liability for dumping high toxic wastes in "Steepfall" ravine in the state forest near his plant. P admitted to D that the materials were highly toxic, and confessed he didn't know what to do about the waste. He couldn't afford to have experts in to handle it appropriately. P described Steepfall ravine as being very remote and virtually inaccessible except to a few hikers or hunters. P told D he had scouted out the bottom of the ravine and determined that it had clay soil and that no rivers ran thorough it. The waste was stored in plastic drums. D promised to keep the discussion confidential. D did go out to the campground and posted notices warning campers, "Danger, Stay out of Steepfall."

C was one of a group of hikers who have become sick from exposure to ground water that contained the leaking hazardous waste from P's drums. C admits that none of the folks in the group ever read warning signs. The group always hike straight west from their campground so that when they return the sun is setting behind them. C admits to likely having gone in that direction even if warned. C also admits that C saw the drums before entering the ravine and could see that they were leaking. Of course C denies knowing the leaking liquid would make C sick. C sues D in a comparative negligence jurisdiction. Discuss C's cause of action against D.

Section II. Essay Questions. (Total Time 180 minutes).

Question I. (90 minutes).

When Clyde returned home from jail, where he had been serving 10 years for armed robbery, he learned that his wife, Sarah, had taken up with Bubba, a new boyfriend. In a rage, he questioned Sarah, and learned that Bubba was off hunting with friends at a private hunting lodge in the country. Clyde told Sarah not to warn Bubba that he was coming after him, and went to buy a gun.

In violation of a federal gun control statute, which prohibited the sale of guns to felons without a background check and a two day waiting period, Walter, owner of a gun retail store, sold an assault rifle to Clyde.

Clyde took his assault rifle and immediately set out after the Bubba.

When Clyde got to the hunting lodge, he learned from Dave, the managing partner of the lodge, that Bubba was deer hunting north of the river. He told Dave that he, too, was aiming to do some hunting, but that it wasn't deer. Dave told Clyde that the lodge and land around it was private and told Clyde to leave. Clyde took off in his car, tires squealing.

Dave knew that Bubba was hunting with his business partner, Rambo. Rambo was wearing a two-way radio, and Dave tried to warn Rambo that Clyde might be coming. During his radio call Dave stated that a guy dressed in army camouflage, and a red bandana said he was going to kill someone named Bubba. He tried for about 10 minutes to reach Rambo, but then gave up. He made no calls to the police, nor did he try tell Rambo to warn Bubba directly.

Unbeknownst to Dave, Rambo had overheard Dave's attempt to reach Bubba. He went out into the woods and took his assault rifle (same brand as Clyde had just purchased,) climbed a tree stand and waited for Clyde. When he saw a fellow dressed in camouflage, and a red bandana, he figured it was the guy trying to kill Bubba. He called down from the tree stand and told the fellow to drop his weapon. The fellow in the bandana instead turned and fired at him. Rambo returned fire, shooting wildly in the general direction of the guy in the red bandana. Rambo would later say that after a short pause after the first exchange of fire it next seemed like the whole woods erupted with the sound of shots and flying bullets. When things finally quieted down, Rambo went down to look, and found Bubba, shot once, through the head. It was impossible to determine if the bullet came from Rambo's assault rifle, or someone else's.

Clyde has not been found and it is supposed that he has fled the jurisdiction.

Discuss Bubba's estate's law suits against Walter, Sarah, Dave, and Rambo.

Essay Question II. (50 minutes)

Comment critically on the following statement. “After the expansion of liability during the mid 20<sup>th</sup> century, tort law has been gradually retreating to a more traditional 19<sup>th</sup> century negligence analysis. Examples of this trend away from strict liability can be found in cases and law regarding 1) *res ipsa*, 2) the application of *Rylands v. Fletcher* and Restatement 2d 519 and 3) modern developments in products liability law.