

TORTS FINAL  
1990  
Professor Thomas Mack

You have four hours to complete the exam. Do Not write your name or otherwise identify yourself in the blue books. Put your social security number on each blue book used and identify each blue book as “1 of 3”, “2 of 3”, etc. This is a closed book exam and you may have no study materials or other writings on you or near you. Assume you are in a jurisdiction in which contributory negligence is a complete defense.

I

In 1989, Boo bought a new car, the Zoom, from Zoom Motors Inc. To pay for it she obtained an installment loan from the National Bank, pledging title to the car to the Bank and authorizing the bank in her loan agreement to peacefully repossess the car if she defaulted in her monthly payments.

At the beginning of 1990, Boo was three months behind in her loan payments and had received several notices from the bank to bring in either the car or full payment of the overdue monthly installments. About that time, she received a registered letter from Zoom Motors Inc., stating:

We have discovered that due to our negligence, there is a defect in all Zoom axles which can cause crashes at speeds in excess of 50 miles per hour. Our local service center will replace your axle free of charge. Go directly to our service center for the replacement. Until the axle is replaced, do not operate your Zoom at a speed in excess of 30 miles per hour.

Boo was planning to have her extremely expensive heirloom necklace cleaned and after reading the Zoom Motors notice, decided to bring the necklace in that day and also drop the car off at Zoom Motors’ service center to replace the axle.

She drove downtown at 25 miles per hour. On the way to the jewelry store, she decided to cash a check. She stopped at a bank across the street from her regular bank, the National Bank, not wishing National Bank to press her on her overdue payments. She left her car, unlocked, in the other bank’s lot, with the key in the ignition, unknowingly violating a statute which prohibited leaving a car parked and unattended with the key in the ignition.

The National Bank’s loan officer saw and recognized Boo’s car from across the street and called another bank employee, Joan, the bank’s repossession specialist. Joan grabbed a set of skeleton keys used to enter and start cars and ran across the street to repossess Boo’s car.

When Joan saw the keys in the ignition, she put her skeleton keys away, started the car and drove onto the highway to take the car to a commercial storage facility. Joan did not fasten her seatbelt.

Joan was driving 55 miles per hour in a 45 mile an hour zone established by statute. The axle failed because of its defect, causing the car to slam into a concrete post on a bridge over a river, destroying the car, seriously injuring Joan, and causing the necklace to fly from the glove compartment out of the car and into the river.

1. Joan sues Zoom Motors and Boo in negligence for her injuries. Analyze.
2. Boo sues the Bank and Zoom Motors for the loss of her car and of her necklace. Analyze.