

DISTRICT OF COLUMBIA SCHOOL OF LAW

Professors Cahn & Mack
Fall 1992

Torts
Final Examination

- I. Mark your blue books according to which section you are in.
- II. This is a closed-book exam; you may not possess, use, or even have near you any notes or other materials with writing on them. **DO NOT** write your name or identify yourself in any manner other than placing your social security number on your examination book.
- III. If you use more than one blue book, number the books in sequence (“1 of 3, 2 of 3,” etc.) and place your social security number on each book.

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City adopts a firm and clear policy that all on-duty police officers in all police cars must pursue and stop anyone suspected of committing a crime or a moving traffic violation. In adopting the policy, city does not realize that some of City’s police cars are unmarked cars which have no marks or identifying equipment, such as portable flashing red lights, by which a citizen could easily determine that the car is a police car.

These unmarked police cars are not used in undercover operations such as drug sales because they have police radios in them, which together with the radio antenna would make them recognizable as police cars if used in drug deals. The cars have a very tall radio antenna standing up from the middle of the trunk lid on the back of such cars. A great many streetwise residents, particularly in low income areas of the city, immediately recognize such cars as being police cars. Despite the cars being too recognizable for undercover operations, they are very useful for other police purposes, such as getting within a block or so of a crowd or group suspected of crime without being recognized as a police car.

All officers have been ordered to strictly follow the City Policy, whether in marked or unmarked cars.

Boo, a low income resident living in a low income area of the city, goes out one night in her car to visit a friend. Boo is driving 65 mph in a 45 mph zone established by statute. She speeds past two plain-clothes police officers in an unmarked police car. The officers pull along side Boo’s car at a stoplight shouting at her “Pull over! We’re the police,” just as she pulls away from the stoplight as it turns green. The windows in both cars are down and Boo hears to order to pull over but does not hear the words “we’re the police” because she’s driving away. She also

see the two men and notices the unusually long antenna on the rear of the car, but she still does not realize it is the police. She assumes the shout was some form of flirtation or hostility, and keeps going, getting back up to her 65 mph speed. When she notices in her rear view mirror that the car is following her, she becomes afraid and speeds up, to 75 mph, as does the police car. She speeds up again, to 80 mph, as does the police car. Now she is terrified that the men are trying to rob her, or worse. Her terror causes her shortness of breath which in turn triggers an asthmatic attack which causes her severe pain and further terror. After three minutes of the high speed, terrifying chase, Boo pulls over and stops because her breathing is so short she cannot drive. The officers also stop, jump out, pull their guns and order her out of her car, with her hands up.

As Boo gets out of the car, officer Ed, the driver of the police car accidentally discharges his gun, the bullet hitting a street lamp. A piece of glass from the shattered lamp falls down and strikes Boo, causing injury. Boo's breathing problems cause her to suffer a previously unknown condition resulting in permanent, partial eyesight loss.

Boo sues City, alleging City was negligent. Under the law of the state where Boo sues and the events took place, City can be liable for its own negligence and also for the negligence of its police officers.

Ed hires as his attorney. Tom, like all attorneys in City, has access to free Westlaw and other computer research services at the county law library. Few attorneys make use of these services. City and county are relatively small, in a small, poor and mostly rural state. Had Tom made use of the computer research services, he would have discovered his state supreme court had just reversed previous state law making officers liable for negligence on duty, holding officers immune from such liability. The ordinary methods of research used by attorneys in the area do not reveal this new immunity defense in time for Tom to make use of it before the trial court or before having to decide whether to appeal.

I.

Analyze the prima facie negligence liability of City for its own acts.

II.

Analyze the prima facie negligence liability of Ed for his shooting.

III.

Analyze whether the city and Ed have a defense of contributory negligence by Boo.

IV.

Analyze whether Ed has a prima facie negligence case against attorney Tom if Ed were to lose to Boo.