

TORTS II FINAL EXAM SPRING 2006  
Professor Mack

I

Ann invites her friend Mo to her house one afternoon to have a drink and a couple of appetizers. Mo comes over with her four year old child, enters the living room with Ann, where they sit down and have their first drink.

The child wanders around the first floor of the house. He goes into the kitchen, adjacent to the living room. Ann had been preparing to cook some asparagus for an appetizer. She had put water in a shallow frying pan over a low heat, intending to cook the asparagus in the heated water. By the time the child entered the kitchen, the water was very hot, and Ann had left the handle of the pan sticking out over the front edge of the stove. The child reaches up and grabs the handle, accidentally tipping the pan and spilling the water and badly burning his stomach.

The child sues Ann and his mother. Analyze the duty owed, if any, assuming that any parental immunity doctrines have been abolished..

II

Ralph Nader purchased a ticket from American Airlines to fly from Washington, D.C., to Chicago, Ill., receiving a confirmed reservation on flight 970. When he arrived at the boarding gate at the proper time and date, he was advised that the airline had overbooked the flight and that he had been bumped off of that flight, despite his confirmed reservation.

It was at the time a newly adopted practice of the airlines to oversell tickets for each flight because so many times people did not show up for the flight they had purchased a ticket for. The chances of anyone being bumped off of such a flight were extremely low. In fact, Ralph had a 99.95% chance of being seated on the scheduled flight. Because of the extreme rarity of being bumped, the airlines treated the risk as minimal and did not advise customers of their newly adopted practice. As it turned out, despite the statistical rarity, too many people did show up for this flight and Ralph was bumped despite his having been told he had a confirmed reservation.

Because of being bumped, Ralph missed a rally he was scheduled to speak at in Chicago and had to pay for a guaranteed reservation he had made at a Chicago hotel.

Nader was angry. He had just been bumped from another airline three days before, despite his having had a confirmed reservation.. When American sent him a check for the cost of the ticket, he refused to cash it, instead suing for fraudulent misrepresentation.

Two years after American's bumping of Nader, the federal government for the first time required all airlines to post notices of and publicize the fact that a confirmed reservation was not a guarantee of a seat on a flight.

Analyze American's potential liability, if any, to Nader.

### III

Ali owns a hundred acres adjacent to a small town. Some years ago, he had a pond dug on his property and filled with water so he could have a pretty view from his house up the hill. The sides of the pond are sheer, creating an immediate drop off and depth of seven feet. Gradually, underwater grasses naturally grew along the shore of the pond, which grasses, while beautiful, create the illusion of a pond bottom a foot or so beneath the surface of the clear water. Ali has an outdoor barbeque setup in a garden near the pond. More than once he has had to clean up garbage someone left around the barbeque area, including bags with hamburger bun brand names on them, other food wrappers, popsicle sticks, the remnants of ice cream cones, and some used diapers. One night a crowd of children enter his property to swim in the pond. One of them, Melissa, a rambunctious ten year old, runs into the water, expecting to stop before it gets deep. Much to her surprise, she is immediately in over her head, and she drowns.

Analyze Ali's liability in negligence, assuming there are no issues regarding proximate cause, contributory negligence, assumption of risk, or last clear chance.