Widener University School of Law

Torts—Prof. Kotler

Final Examination Fall 2009

INSTRUCTIONS: The following five (5) pages make up the final examination for Torts. There are two (2) questions. The relative weight (percentage) of each question is indicated next to it. Budget your time accordingly. You must answer both questions. You have three (3) hours.

In answering the questions, you should consider all relevant facts contained in the fact pattern below (which was previously provided to you). In the event it is necessary to assume the existence of any other facts in order to completely analyze the problems presented, you may do so provided that you state your assumptions. If there is a split in authority on a particular legal issue, your answer should indicate that you are aware of the existence of the competing views and recognize that a different result or different analysis would follow depending on which view the court adopts.

This is the story of the three Piggs--Abel, Baker and Charlie. As you will recall, they left their mother and went off to make their way in the world.

Abel Pigg met a man selling prefab straw houses (hereinafter "Strawman"). During the course of their negotiations, Abel expressed some concern about the house's "wolf-proof" qualities.

In fact, an independent testing organization, Undertaker's Laboratories (U.L.) had tested a home identical to that being sold by Strawman seeking to rate the design for "wolf-proofness." The test house had failed the test, falling down at the first huff and puff. Because the test results were so unsatisfactory, U.L. refused to assign a rating to the house. Strawman was present during the U.L. testing.

In response to Abel's question regarding the existence of a U.L. rating, Strawman asserted that, "These homes have never been rated by Undertaker's Laboratories. Nevertheless, I consider them to be the Cadillac of straw houses, light as a feather, strong as steel and so easy to set up that even a piglet could assemble them."

Although Abel spent several hours examining a model home which was identical to the one he eventually purchased, he never subjected it to a "huff and puff" test.

The home in question was manufactured by Vaughn Prefab Homes, Inc. Its handbook, which was given to each of their sales staff, stated, "It is Vaughn policy to be absolutely honest with all potential customers. Dishonesty in any form will not be tolerated."

Strawman was paid a commission of 10% of the profit on each home he sold. Although he occasionally went to Vaughn to attend sales meetings, normally he worked at home. He developed his own leads and worked whatever hours he found convenient.

U.L. rated houses in the neighborhood were selling for \$1000. Abel paid \$500 for his Vaughn house. At trial, the expert testimony will establish that the fair market value of Abel's house was \$200.

Later, Abel sustained severe personal injuries at the hands of a mugger, B. B. Wolfe. Wolfe approached Abel's house while Abel was at home and pounded on the door. Abel stuck his head through a second story window to see who was there and Wolfe leaped at him. The window was too high, however, and Wolfe was unable to reach him. Nevertheless, Abel was severely frightened.

Wolfe then demanded that Abel execute a promissory note agreeing to pay Wolfe \$500 in one week. If he failed to make payment when due, Wolfe told him, he would return, blow the house down and enjoy baby back ribs for the rest of the winter. As a result, Abel was unable to eat and suffered from insomnia. When he did sleep, he had nightmares.

The following week, Wolfe returned and demanded payment. He promised Abel that he would not harm him if payment were made. Abel refused. Wolfe then huffed and puffed and blew the house down. Upon gaining entrance, he severely beat Abel. The beating was witnessed by Abel's girlfriend Prissella. She was very upset about the incident and is now seeking psychiatric treatment for her recurrent episodes of anxiety.

Baker Pigg took a different fork in the road which took him to the big city. There, he bought a house made of sticks. A city ordinance provided that, in the case of construction of residences using sticks, "only sticks having a flame retardant rating exceeding five (5)" could be used.

The flame retardant rating number is arrived at by holding a flame to the building material and timing how long it takes for the material to ignite. Thus, for example, if the rating is five, it takes five minutes to ignite.

The city ordinance further provided that "failure to comply with the requirements of this ordinance shall be punishable by a fine of \$1000 or imprisonment for not more than 30 days or both."

The evidence at trial will establish that use of building materials with a flame retardant rating in excess of five was extremely rare except in this particular city. The

overwhelming majority of builders in surrounding communities used sticks with a flame retardant rating of three.

The ordinance at issue was enacted following extensive lobbying (and numerous campaign contributions) by a local company called "Stickbuilders Inc." Because the cost of increasing the flame retardant capacity of sticks was very small and because they could increase the price disproportionately, their profit margin was increased by requiring the higher rating. The insurance industry joined in the lobbying effort citing the need to reduce fire claims and asserting that it was necessary to do so in order to stabilize premium levels.

Baker Pigg purchased the stick house from the builder/vendor Phoenix Construction Co. for \$2000. Phoenix used sticks with a flame retardant rating of three. Had they used materials with a rating of 5 or higher, it would have doubled the cost of construction.

After leaving Abel, Wolfe went to the home of Baker. Finding that no one was home, Wolfe built a small fire under the house. He then left. Wolfe will later testify that he built the fire to roast marshmallows intending to extinguish it before he left.

Baker was out buying a fire extinguisher. He returned home with the fire extinguisher exactly four minutes after Wolfe left. By that time, the house was engulfed in flames and was beyond saving.

The flames spread from Baker's home to his neighbors' homes. A rat which lived in a neighbor's house caught fire. It ran into a nearby forest. The burning rat ignited brush and trees on the eastern edge of the forest. As it happened, a major forest fire caused by lightening was already burning on the western side of the forest. The two fires combined and together burned down the vacation home of S. T. Bear.

The local fire department had attempted to extinguish the blaze at Bear's house. Unfortunately, during the course of the fire fighting effort, the chimney collapsed and bricks from the chimney fell on both Fox, a firefighter, and Bear. Both sustained severe personal injuries.

Two neighbors, Ferret and Deere, observed the chimney accident. Deere, a dermatologist, sought to render assistance. Although Bear was not in any apparent, immediate danger, he lifted Bear onto his shoulders and carried him into his home. Unfortunately, in the course of moving Bear, he aggravated a back injury which Bear had sustained in the chimney incident. Deere also injured his own back in the process of moving Bear.

At trial, Eagle, an emergency medical technician with 20 years of experience, will testify that Bear should not have been moved. The custom and practice among EMTs is that persons with suspected back injuries should never be moved until such time as they can

be immobilized by being strapped to a "back board." He will further testify that he would not have moved Bear.

Later that evening, Ferret remembered that Bear had a collection of rare and valuable paintings. Although the fire department had posted signs warning people to stay out, he ignored the signs and entered the damaged house looking for a Monet painting which he knew was there. He will later testify that he feared the Monet would be stolen unless removed from the house and stored in a safe place such as his own home. While searching for the painting in the darkened house, he tripped over a pile of debris injuring his knee.

Ferret's orthopedic surgeon has recommended that he have knee surgery. Because of his great fear of doctors, hospitals and all invasive medical procedures, however, he has refused to have the surgery. Doctors will testify that if he has surgery, any disability caused by the knee injury will be minimal. Without the surgery, he will be severely disabled for the remainder of his life.

Charlie Pigg purchased a new brick home. Wolfe came to Charlie's home and, when he was unable to blow it down, camped outside for two days intending to harm Charlie should he leave the house. During that two-day period, Charlie was busy unpacking and was utterly unaware that Wolfe was outside.

After two days, Wolfe entered the house through a back entrance. Upon entering, a spring gun set by Charlie discharged, severely injuring Wolfe. At the time of the attempted entry, Charlie was asleep in a different part of the house. Upon being awakened by the sound of the gun discharging, Charlie got up to investigate. He found Wolfe's body near the back entrance. Wolfe was unconscious and seriously injured, but alive. Charlie went back to bed and slept soundly for the rest of the night. The following morning he called and ambulance and Wolfe was taken to the nearest hospital where he lapsed into a coma. Doctors will testify that if Charlie had called an ambulance the night before, there was a 40% chance that Wolfe would recover. Now, because of the delay, there is only a 10% chance of recovery.

Charlie's brick home had a furnace manufactured and installed by Hades Manufacturing Co. Several months after installation, the furnace exploded causing extensive property damage.

At trial, a representative of Hades will testify that they individually inspect every furnace before installing it. Additionally, the testimony will be that the particular installer of this furnace had been doing that type of work for 20 years and that he was so widely regarded for his skill that he was hired to teach a course (Furnace Installation 201: A Postmodernist Perspective) at the International Furnace Installer's Union.

Discuss and analyze the following lawsuits. Unless the question specifies otherwise, discuss the action in its entirety, including defenses, if any. DO NOT DISCUSS THE RIGHTS AND LIABILITIES OF INDIVIDUALS WHO ARE NOT IDENTIFIED IN THE QUESTIONS. DO NOT DISCUSS LEGAL THEORIES OF LIABILITY OTHER THAN THOSE SPECIFIED IN THE QUESTIONS.

QUESTIONS

- 1. Abel Pigg v. Strawman and Vaughn Prefab Homes, Inc. (action for deceit). 30%
- 2. S. T. Bear v. Phoenix Construction Co. (action seeking damages for harm to property based on negligence and negligence per se). -70%