

FINAL EXAMINATION
ADVANCED TORTS
December 11, 2012

Two bright young entrepreneurs, Pete & Puck, decided to make some money and contribute to the public good at the same time. They decided to invest in wind power, creating a company they called WindWell. They purchased some coastal land inexpensively because it was remote, steep, rocky, near rough seas, and, well, very windy. They contracted with 3-Arm Corporation to buy 50 of the special windmills used for generating power.

Drilling to install the windmills was more costly than Pete or Puck expected because the land had more solid rock than expected. Consequently, they sought investors. True Blue Accountancy certified the company's financial records, labeling the enterprise "robust." What True Blue overlooked, however, was that the substantial bank account balance was the proceeds of a loan from Puck's grandfather. Believing that WindWell was financially stable, investors came forward so that WindWell was able to install 40 of the 50 windmills.

The first several months of operation were just like Pete & Puck's dreams. They were able to generate considerable electricity and sell it at a good price. After six months they went to install the remaining ten windmills, but 3-Arm refused to deliver the remaining 10 windmills. 3-Arm told WindWell that their best client, WeatherAway, had become angry when they heard 3-Arm was supplying a potential competitor and 3-Arm could not afford to lose the WeatherAway account.

WeatherAway was very large company that dealt with a variety of alternative sources of power, including hydroelectric, solar, wind, and geothermic.

That same month fishermen who got specialty fish from the rocky crags below sea level had begun to complain that the fish seemed to all be losing weight and their flesh was stringy and tough. Biologists soon determined that the windmills, nearly silent in the air, generated sound waves that traveled underwater for many miles, increasing both in number and pitch as they reverberated off the many underwater rocks & caves. This “revved up” the nervous systems of the fish and interfered with proper development.

Barney got up a group called “Save the Coast, Save the Fish” (SCSF). These protestors first began coming to the WindWell property at night and throwing large fishing nets over the windmills to stop their turning. One of the group, Brady, lost his footing when tossing a net and fell to his death on the jagged rocks below.

Even though the only residences in the vicinity were quite a distance from WindWell, the homeowners began noticing cracks in fences and even some walls. One homeowner, Harry, happened to meet Barney in a pub one night. They decided to print & distribute flyers that said, after a most uncivilized headline:

Pete and Puck bought our land because they didn't want to ruin the land they already had. They knew the sound waves would distress the fish & cause fissures in surrounding structures. Stop the Plunder!!

One of the SCSF members shadowed Puck for several weeks. As Puck handed Grandfather a loan payment, Pedrick snapped a photo. The next handbill showed the photo with the caption: “Windwell buys influence with the authorities so they won't enforce the ruling that wind farms are an environmental danger!”

The only “ruling” to which this could conceivably refer was, in fact, an article published ten years earlier in a national news magazine Timesweek. The editorial cautioned about “the law of unintended consequences” and the need for care before moving into alternative power sources. It cited wind farms for “scenic pollution” and “as yet unknown hazards.”

Advise Windwell of ALL the various claims that could arise from these facts, including arguments both sides could raise. Give your professional judgment as to the likely outcome of the claims, and advise what steps Windwell should take immediately to best position itself against the potential, uh, windstorm of legal actions.