

Intentional Torts Mid-Term
90 minutes

The Smiths and the Joneses, living a quarter mile apart, are neighbors. The Joneses regularly turn in the “out” portion of the road to their driveways. Repeatedly, the Smiths have warned them that this is dangerous, especially as the Smiths’ driveway is lined with trees, making it difficult to see when someone is coming in the wrong direction. (See drawing below.)

Because the Joneses have ignored all Smith’s requests and warnings, the Smiths decided to stage an accident to demonstrate the danger. The Joneses were just coming back from the airport picking up Grandma for a visit. Grandma was in the backseat of the small sedan with the three young children.

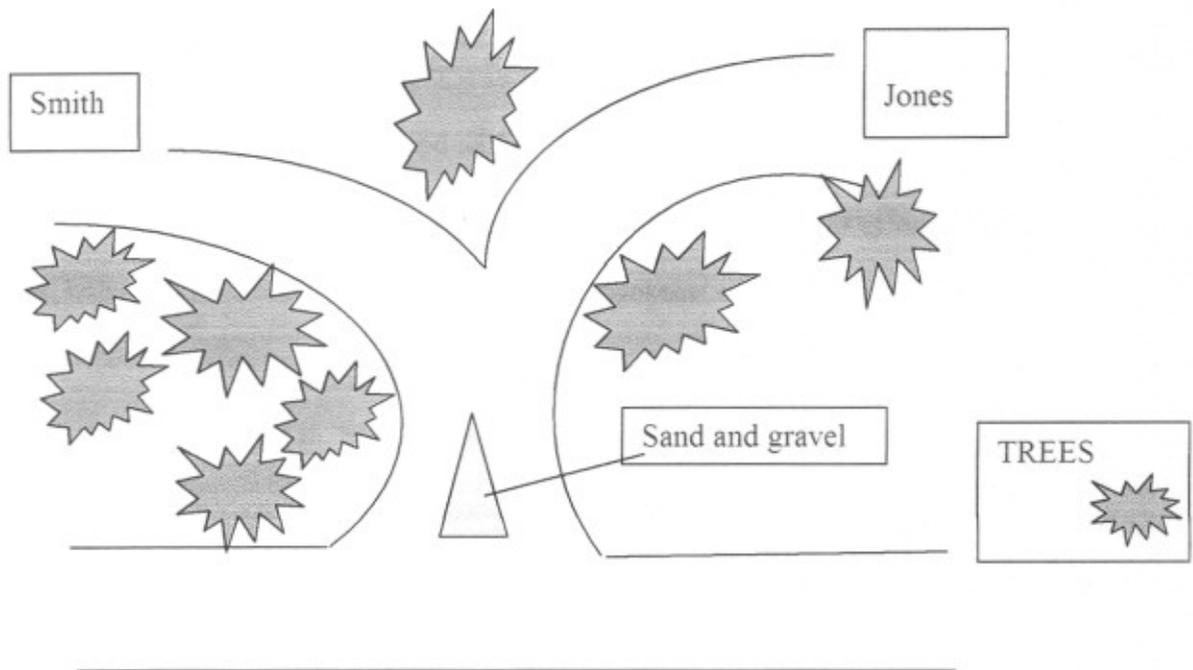
As the Joneses turned in, Smith drove their truck from behind the trees and into the back fender of the car. Smith’s aim wasn’t as good as he thought, however, and he hit far enough forward that he also dented the back door. Because that door wouldn’t open, the children darted out the opposite door. Grandma, however, was unable to climb over the seat to the open door, and had to sit there until the tow truck driver eventually got the door open.

Jones was furious, perceiving that the “accident” had been deliberate. Both men carried guns, and each heard the other unlock and cock his. Just as Smith raised his arm to shoot, Jones shot him. In all, 23 shots were exchanged.

James, 12, and the oldest Jones child, ran into Smith’s house as it was closer. He phoned for the police, then hunkered down inside. Grandma and Jenny, 6, the youngest Jones child, both vomited at the sight of all the blood. Jenny still has nightmares and still worries that something bad will happen to her daddy.

The police, the ambulance, and the tow truck arrived at the same time. The damage to Joneses’ car was not serious, and Smith had no damage to his truck. Smith was pronounced dead at

the scene. Jones, unconscious, was taken for emergency surgery. While removing a bullet that narrowly missed his aorta, the doctor discovered an aneurysm that would have been fatal had it not been treated within a matter of days. In the end, Jones was grateful to Smith because, bizarrely, the shots actually saved his life.



Discuss the potential intentional torts suits and defenses that could arise from these facts. Predict the outcome of each one. Be careful not to add facts. Only discuss the issues we covered in chapters 2 & 3. Be careful to limit your answers to torts; do not discuss the criminal charges that could also potentially arise. Remember, this is your exam for your TORTS class.