**Alternate Case Problems**

*Chapter 3*

**Tort Law and Product Liability**

**3-1.** **Emotional Distress.** Lofton Johnson, a police officer employed by the West Virginia University Security Police, was called to the emergency room of the univer­sity’s hospital to help subdue an unruly patient. Prior to Johnson’s arrival, the patient had informed the doctors and nurses in the emergency room that he was infected with acquired im­mune deficiency syndrome (AIDS). While Johnson assisted medical person­nel in re­straining the patient, the patient bit Johnson on the forearm. The patient had previously bitten himself, and his blood was in and around his mouth when he bit Johnson. On pre­vious occasions, the officer had assisted in restraining AIDS patients, but it was always the hospital’s procedure to inform him that these patients were in­fected with AIDS so that proper precautions could be taken. Although Johnson tested negative for AIDS on several subsequent occasions, he claimed that he suffered severe emotional distress as a result of the AIDS exposure—he was shunned by his family and co-workers and gener­ally felt like a social outcast with an uncertain future. In his suit against the hospital to recover for emotional distress, what will the court decide? Explain. [*Johnson v. West Virginia University Hospitals, Inc.,* 186 W.Va. 648, 413 S.E.2d 889 (1991)]

**3-2. Appropriation.** The United States Golf Association (USGA) was founded in 1893. In 1911, the USGA developed the Handicap System, which was designed to enable individual golfers of different abilities to compete fairly with one another. Between 1987 and 1993, the USGA revised the system and implemented new handicap formulas. The USGA permits any entity to use the system free of charge as long as it complies with the USGA’s procedure for peer review through authorized golf associations of the handicaps issued to individual golfers. In 1991, Arroyo Software Corp. began marketing software, known as EagleTrak, that incorporated the USGA’s system but did not incorporate any means for obtaining peer review of handicap computations. Arroyo’s ads also used the USSA’s without it’s permission. The USGA filed a suit in a California state court against Arroyo, alleging, among other things, misappropriation. The USGA asked the court to stop Arroyo’s use of its system. Should the court grant the injunction? Why or why not? [*United States Golf Association v. Arroyo Software Corp.,* 69 Cal.App.3th 607, 81 Cal.Rptr.2d 708 (1999)]

**3-3. Duty of Care.** Harold Martin was shopping in the sporting goods department of a Wal‑Mart store. At that time, in the department there was only one employee when, according to the store’s policy, there should have been two. In front of the sporting goods section, in the store’s main aisle (which the employees referred to as “action alley”) was a large display of stacked cases of shotgun shells. On top of the cases were individual boxes of shells. Shortly after the sporting-goods employee walked past the display, Martin did so, but Martin slipped on some loose shotgun shell pellets and fell to the floor. Immediately, he lost feeling and control of his legs. Sensation and control returned, but during the next week, he lost the use of his legs several times for periods of from ten to fifteen minutes. Eventually, sensation and control did not return to the front half of his left foot.Doctors diagnosed the condition as permanent. Martin filed a suit in a federal district court against Wal-Mart, seeking damages for his injury. Should Wal-Mart be considered to have had notice of the condition that led to Martin’s injury? Why or why not? [*Martin v. Wal-Mart Stores, Inc.,* 183 F.3d 770 (8th Cir. 1999)]

**3-4. Design Defect.** In May 1995, Ms. McCathern and her daughter, together with McCathern’s cousin, Ms. Sanders, and her daughter, were riding in Sanders’s 1994 Toyota 4Runner. Sanders was driving, McCathern was in the front passenger seat, and the children were in the back seat. Everyone was wearing a seat belt. While the group was traveling south on Oregon State Highway 395 at a speed of approximately fifty miles per hour, an oncoming vehicle veered into Sanders’s lane of travel. When Sanders tried to steer clear, the 4Runner rolled over and landed upright on its four wheels. During the rollover, the roof over the front passenger seat collapsed, and as a result, McCathern sustained serious, permanent injuries. McCathern filed a suit in an Oregon state court against Toyota Motor Corp. and others, alleging in part that the 1994 4Runner “was dangerously defective and unreasonably dangerous in that the vehicle, as designed and sold, was unstable and prone to rollover.” What is the test for product liability based on a design defect? What would McCathern have to prove to succeed under that test? [*McCathern v. Toyota Motor Corp.,* 332 Or. 59, 23 P.3d 320 (2001)]

**3-5. Product Liability.** In January 1999, John Clark of Clarksdale, Mississippi, bought a paintball gun. Clark practiced with the gun and knew how to screw in the CO cartridge, pump the gun, and use its safety and trigger. He hunted and had taken a course in hunter safety education. He knew that protective eyewear was available for purchase, but he chose not to buy it. Clark also understood that it was “common sense” not to shoot anyone in the face. Chris Rico, another Clarksdale resident, owned a paintball gun made by Brass Eagle, Inc. Rico was similarly familiar with the gun’s use and its risks. At that time and place, Clark, Rico, and their friends played a game that involved shooting paintballs at cars whose occupants also had the guns. One night, while Clark and Rico were cruising with their guns, Rico shot at Clark’s car but hit Clark in the eye. Clark filed a suit in a Mississippi state court against Brass Eagle to recover for the injury, alleging in part that its gun was defectively designed. During the trial, Rico testified that his gun “never malfunctioned.” In whose favor should the court rule? Why? [*Clark v. Brass Eagle, Inc.,* 866 So.2d 456 (Miss. 2004)]

**3-6. Elements of Negligence.** New Hampshire International Speedway, Inc., owned the New Hampshire International Speedway, a racetrack next to Route 106 in Loudon, New Hampshire. In August 1998, on the weekend before the Winston Cup race, Speedway opened part of its parking facility to recreational vehicles (RVs). Speedway voluntarily positioned its employee Frederick Neergaard at the entrance to the parking area as a security guard and to direct traffic. Leslie Wheeler, who was planning to attend the race, drove an RV south on Route 106 toward Speedway. Meanwhile, Dennis Carignan was also driving south on Route 106 on a motorcycle, on which Mary Carignan was a passenger. As Wheeler approached the parking area, he saw Neergaard signaling him to turn left, which he began to do. At the same time, Carignan attempted to pass the RV on its left side, and the two vehicles collided. Mary sustained an injury to her right knee, lacerations on her ankle, and a broken hip. She sued Speedway and others for negligence. Which element of negligence is at the center of this dispute? How is a court likely to rule in this case, and why? [*Carignan v. New Hampshire International Speedway, Inc.,* 858 A.2d 536 (N.H. 2004)]

**3-7. Design Defect.** Mary Jane Boerner began smoking in 1945 at the age of fifteen. For a short time, she smoked Lucky Strikes (a brand of cigarettes) before switching to the Pall Mall brand, which she smoked until she quit altogether in 1981. Pall Malls had higher levels of carcinogenic tar than other cigarettes and lacked effective filters, which would have reduced the amount of tar inhaled into the lungs. In 1996, Mary Jane developed lung cancer. She and her husband, Henry Boerner, filed a suit in a federal district court against Brown & Williamson Tobacco Co., the maker of Pall Malls. The Boerners claimed, among other things, that Pall Malls contained a design defect. Mary Jane died in 1999. According to Dr. Peter Marvin, her treating physician, she died from the effects of cigarette smoke. Henry continued the suit, offering evidence that Pall Malls featured a filter that actually increased the amount of tar taken into the body. When is a product defective in design? Does this product meet the requirements? Why or why not? [*Boerner v. Brown & Williamson Tobacco Co.,* 394 F.3d 594 (8th Cir. 2005)]

**3-8. Libel and Invasion of Privacy.** The *Northwest Herald,* a newspaper, received regular e-mail reports from police departments about criminal arrests. When it received a report that Caroline Eubanks had been charged with theft, the *Herald* published the information. Later, the police sent an e-mail that retracted the report about Eubanks. The *Herald* published a correction. Eubanks filed a suit against the paper for libel and invasion of privacy. Does Eubanks have a good case for either tort? Why or why not? [*Eubanks v. Northwest Herald Newspapers,* 397 Ill.App.3d 736, 922 N.E.2d 1196 (2010)]

**3-9.** **Proximate Cause.** Galen Stoller was killed at a railroad crossing when an Amtrak train hit his car. The crossing was marked with a stop sign and a railroad-crossing symbol but there were no flashing lights. Galen’s parents filed a suit against National Railroad Passenger Corporation (Amtrak) and Burlington Northern & Santa Fe Railroad Corp alleging negligence in the design and maintenance of the crossing. The defendants argued that Galen had not stopped at the stop sign. Was Amtrak negligent? What was the proximate cause of the accident? [*Henderson v. National Railroad Passenger Corp.,* \_\_\_ F.3d \_\_\_, 2011 WL 14458 (10th Cir. 2011)]

**3-10. A Question of Ethics**

Intel Corporation has an e-mail system for its employees. Ken Hamidi. a former Intel employee, sent a series of six e-mail messages to 35,000 Intel employees over a twenty-one-month period. In the messages, Hamidi criticized the company’s labor practices and urged employees to leave the company. Intel sought a court order to stop the e-mail campaign, arguing that Hamidi’s actions constituted a trespass to chattels (personal property) because the e-mail significantly interfered with productivity, thus causing economic damage. The state trial court granted Intel’s motion for summary judgment, and ordered Hamidi to stop sending messages. When the case reached the California Supreme Court, however, the court held that under California law, the tort of trespass to chattels required some evidence of injury to the plaintiff’s personal property. Because Hamidi’s e-mail had neither damaged the Intel’s computer system nor impaired its functioning, the court ruled that Hamidi’s actions did not amount to a trespass to chattels. The court did not reject the idea that trespass theory could apply to cyberspace. Rather, the court simply held that to succeed in a lawsuit for trespass to chattels, a plaintiff must demonstrate that some concrete harm resulted from the unwanted e-mail. [*Intel Corp. v. Hamidi*, 30 Cal.4th 1342, 71 P.3d 296, 1 Cal.Rptr.3d 32 (2003)]

**1.** Should a court require that spam cause actual physical damage or impairment of the computer system (by overburdening it, for example) to establish that a spammer has committed trespass? Why or why not?

**2.** The content of Hamidi’s messages caused much discussion among employees and managers, diverting worker’s time and attention, and thus interfering with productivity. Why did the court not consider this disruption to be sufficient evidence of harm? Do you agree?