

FORELL – TORTS B
MIDTERM ESSAY QUESTION – FALL '01
(60 minutes)

Assume all the following events occurred in Oregon and that therefore Oregon law applies. Do not discuss any claims for negligence.

The Smith family and Tom Jones are neighbors residing on acreage in the rural town of Joseph in eastern Oregon. Over the years the Smiths and Tom Jones have often entered each other's land with the other's knowledge to hunt coyotes and deer.

Tom frequently travels out-of-town and has Mary Smith, aged 16, care for and feed his dog, a husky/border collie mix, named Rowdy. Mary and Rowdy get along just fine. During the day Rowdy is kept in the large enclosure surrounded by tall fence that can be entered by the backdoor onto an enclosed porch or through the padlocked gate from the driveway. Posted on the gate is a "Beware of Dog" sign. In addition, a county notice is posted that states: "Warning! Potentially Dangerous Dog on the Premises" because Rowdy once chased a mail carrier. In June 2001, Tom left town for four days. As usual Mary agreed to take care of Rowdy. Tom gave her keys to the padlock and to the door to the back porch. She did not have a key to the locked door from the porch into the rest of the house.

The day after Tom left town, Mary suffered appendicitis and had to have emergency surgery. Without informing Tom, she persuaded her brother, Chuck, aged 14, to take care of Rowdy. Chuck had never dealt with Rowdy before and was intimidated by him. Chuck unlocked the gate and then unlocked the back porch door to let Rowdy in. As he was opening a can of dogfood, Rowdy blocked the back door and growled menacingly at him. Panicking because he didn't know how to escape from Rowdy, Chuck reacted by throwing the can of dog food at Rowdy, hitting him in the shoulder. Rowdy yelped and bolted out the door, knocking Chuck over as he too tried to escape. He hit his head and suffered a concussion which resulted in permanent hearing loss in one ear. When he came to, Rowdy had escaped out the open gate.

Peter was lawfully hunting coyotes on horseback on federal land on the outskirts of Joseph. Peter spotted Rowdy, who bore a striking resemblance to a coyote. He pursued Rowdy from a distance. While on federal land, from a distance of about 150 yards, Peter shot at Rowdy, whom he mistakenly believed was a coyote. His bullet hit Rowdy in the head, causing him to collapse.

Peter rode up to finish the job but when he got near, he realized he had shot a dog instead of a coyote. Horrified at his mistake, Peter dismounted to see what he could do for the dog. When he examined Rowdy, he was unconscious but still breathing. Peter gently picked him up and placed him over the front of his saddle and rode back to Peter's home about a mile away. When he reached his home, he put Rowdy in his car and drove to the veterinarian. While he was carrying Rowdy into the vet's office, Rowdy

revived and reacted by biting Peter on the arm, causing him to have to go to the doctor and get fifteen stitches and a rabies vaccine. Peter signed a consent form for the treatment of Rowdy's head wound without revealing that the dog didn't belong to him. The vet was able to save Rowdy but he was permanently blinded in one eye. While treating Rowdy's head wound, the vet noticed that Rowdy also had a possibly malignant growth on his hind leg. Without checking with Peter, he removed the growth. The vet bill was \$700.00 for the head wound and \$200.00 for the removal of the growth. Peter paid the bill for the head wound but refused to pay for the removal of the growth.

Because Rowdy had no collar or other form of identification, Peter took Rowdy home with him and put a notice in the local paper's lost and found column. Tom saw the ad and phoned Peter. Tom went to Peter's house to pick up Rowdy. He was horrified when Rowdy limped up to him with a large patch over his eye and bandage on his leg. When Peter explained what had happened, Tom lost his temper and began berating Peter loudly and profanely. Among other things, he called Peter a cowardly monster who deserved to have what happened to Rowdy happen to him. He threatened to have Peter arrested for dognapping and promised to sue him for all he was worth. When Peter attempted to show him the bills for the vet, Tom became even more agitated. He pointed to the shotgun in his truck, warning that Peter hadn't heard the last from him. Peter told Tom to take his dog and get off of his property. Tom stormed off, put Rowdy in the truck, revved his engine loudly, pointed his shotgun out the truck window and fired a shot into the air. He then sped off in a cloud of dust. The shot hit a tree limb that fell and grazed Peter on the shoulder. Peter was so upset by this incident that he vomited and was unable to go to work the next day.

First, assume you represent Tom in a tort suit against Chuck and his parents. Discuss and evaluate any tort claims Tom may have against Chuck and any privileges Chuck may be able to raise. Recommend whether Tom should sue Chuck and his parents and why.

Second, assume you represent Chuck in a counterclaim against Tom. Discuss and evaluate any tort claims Chuck may have against Tom and any privileges Tom may be able to raise. Recommend whether Chuck should counterclaim against Tom and why.

Third, assume you represent Peter in a tort suit against Tom. Discuss and evaluate any tort claims Peter may have against Tom and any privileges Tom may be able to raise. Recommend whether Peter should sue Tom and why.

Fourth, assume you represent Tom in a counterclaim against Peter. Discuss and evaluate any tort claims Tom may have against Peter and any privileges Peter may be able to raise. Recommend whether Tom should counterclaim against Peter and why.

Finally, assess who, among the vet, Chuck and Tom, should be responsible for the part of the vet bill for removal of the growth and why.

Assume the following statutes were in effect at the time these events occurred.

25.000 Liability of owner. Any person to whom damage may be occasioned by a dog not owned by him shall be entitled to recover such damages of the person who owns the dog unless the damage was occasioned to him while he was engaged in the commission of a trespass or other tort.

30.765 [insert] (1) (2)