

TORTS I
Prof. Mark Yates
Fall 2008

QUESTION II
Recommended time: 60 minutes

In the foothills above Santa Barbara, California, there is an abandoned estate known as the "Tea Gardens." The property is overgrown with scrub-oak and weeds, etc., and, although there are no structures left on the property, there are several empty swimming pools and some concrete paths. Throughout the years it has been a very popular spot where Santa Barbara locals hike and picnic and enjoy spectacular views of the Pacific Ocean. It is especially popular among teenagers and college students. They use the empty swimming pools for skateboarding and they "party" on the property on weekend nights.

The property is owned by Texco, a major oil refining corporation. The corporate directors are well aware that the property is used for local recreation and, although they have never given express permission for public use, the unofficial policy has been to "look the other way." The directors hope to someday build the corporate headquarters there, but in the meantime they feel they are being "good neighbors" by tolerating the almost constant trespass onto the corporate property.

On a very bright and sunny fall afternoon in mid-November, a group of college students arrived at the estate for a barbeque. At this time of year, Santa Barbara and the surrounding area often experience "sundowner winds." These winds blow offshore, and as they rush down the foothills toward the ocean, the dry air compresses and gets very hot. Throughout the years in Santa Barbara County, fires have been common in these conditions, and several of the fires have turned into major conflagrations, burning hundreds of homes.

On this particular afternoon, conditions were ripe for sundowners. The students, however, oblivious to the danger, started a large bonfire. Just as it got started the winds picked up and within minutes the fire was out of control, being swept down the foothills toward the city by the increasing winds. Tragically, it turned out to be one of the worst fires in the city's history. More than 150 homes were lost and many people were injured during the rush to evacuate.

Needless to say, the fire gave rise to numerous lawsuits. One of them, filed against Texco for negligence, was brought by Alex. He had been hiking near the area, and as the fire rushed toward his location he fled in a panic. As he looked over his shoulder to check the progress of the fire, he did not see that he was running straight onto the main road used by fleeing residents. He ran directly in front of a speeding Lexis, which couldn't stop in time to avoid hitting him. Alex suffered serious injuries.

Betty is also suing Texco for negligence. She lives, or rather, lived, about fifteen miles north of the burn area. On the day of the fire a painting crew was working on her house. They had been removing the old paint with blow torches (a commonly used technique in the painting trade), but on this day they warned her that it would not be safe. Betty, however, impatient to get the project completed, told them to continue with the paint removal.

The winds kicked up and a spark from one of the torches started a fire on her roof. Betty called 911, but the fire department had devoted almost all of its resources to the big fire and only one small truck was held in reserve for other emergencies. Its crew responded to the call, but the truck, which had not been used in over a year, broke down in route. The firefighters later explained that even if they had been able to get there, Betty's house probably could not have been saved.

Casey is a third plaintiff suing Texco for negligence. He lived fifty miles south of the Santa Barbara fire. His house was burned to the ground by a fire that started when a burning ember flew off of a passing truck and landed on his roof. The truck, filled with dead leaves and weeds, had passed the fire on its way south from Santa Barbara. The drivers had not noticed that a spark from the fire had landed in the back of their truck and continued to burn as they drove down the freeway.

Your firm represents Texco. Please analyze each of the above lawsuits, considering the strengths and weaknesses of each case for the plaintiffs, and advise the partners of the best arguments that they might raise on behalf of Texco.