

Professor Gilles  
Practice Examination Fall 1994  
Torts 54

1. This is a closed book examination.
2. Please write the LAST THREE DIGITS of your social security number, and NOT YOUR NAME, on each bluebook you use. Write only on one side of the page. Write legibly -- what I cannot read, I cannot grade.
3. You have 10 minutes to read this examination and outline your answer, and 50 minutes to write it. I will tell you when you may begin writing.
4. This is a TORTS exam. While I applaud your knowledge of criminal law, contracts and property, etcetera, I will not give it any credit.
5. If you feel that the same analysis or legal rule applies to several different claims, discuss it fully where you feel it is most appropriate. You may cross-reference this discussion elsewhere in your answer.
6. Even if you conclude that one element of a claim fails, it would nonetheless be prudent to discuss the other elements of that claim.
7. This question takes place in the fictional, but beautiful, state of Scotia.

QUESTION 1

On October 26, 1993 Robert Howsley, who was eighteen years of age, learned that he was terminally ill with throat cancer. His doctors, who attributed his cancer to his prolonged use of chewing tobacco, have predicted that he has only a 20% chance of survival.

Angered and unbalanced by this news, Howsley embarks on a series of petty crimes. On November 9, 1993 at approximately 11:00 p.m. Howsley attempted to steal a battery from Pop Gilliam's car. The car was parked in the driveway of Gilliam's home. Harlan, Gilliam's minor son, heard a noise in the front yard looked out and saw someone attempting to open the hood of his father's car. He went into the living room where his father was watching Monday Night Football and informed his father of what he had seen. Gilliam put down his beer, the fifth he had consumed that evening, took his .22 rifle from a closet and went upstairs to his son's room to observe from a window. Gilliam's position at the window was approximately thirty feet from the event he was observing.

Though it was dark, Gilliam was able to perceive the shadowy figure of a person bent over the engine compartment of his automobile. He saw this person lift the battery out of the car and set it down in front of the car. At this time Gilliam, his judgment somewhat clouded by his drinking, decided to fire a warning shot close to the intruder's feet in order to scare him and cause him to run away. The rifle shot, however, which traveled the approximate thirty-foot distance, struck Howsley in the head, killing him instantly.

The State of Scotia has a criminal statute which provides:

"homicide is justifiable when inflicted for the purpose of preventing robbery, burglary, or theft at night, at any time while the offender is in the accused's home or is within reach of gunshot from such home." For the purposes of this question you may assume that Howsley was committing theft at night, that he was within reach of gunshot from Gilliam's home, and that Gilliam committed homicide.

Discuss Pop Gilliam's tortious liabilities and any defenses.