

September 26, 2016

Law 580: Torts

Section 2

Oral Argument # 2

In-class exercise for October 10, 2016

We are in a jurisdiction in which the *only* relevant authority is the material in the casebook on pages 178 to 260. For the purpose of this oral argument exercise, you should assume that any statutes that appear in the Casebook within that page range are statutes adopted by neighboring jurisdictions rather than your jurisdiction.

Tony died of lung cancer six months after undergoing lung transplant surgery. After his death, his estate filed a negligence suit against Dr. Alberto, who had been Tony's doctor before, during, and after the transplant. The case proceeded to trial, where the evidence presented tended to show the following facts:

Tony suffered from severe pulmonary sarcoidosis, a potentially fatal disease that causes inflammation of lung tissue. His disease grew more advanced, and his doctor, Dr. Alberto, placed him on a waiting list for a lung transplant. Over the next three years, Tony's lungs continued to deteriorate. Finally, a pair of donor lungs became available after the donor died in an automobile accident. Emergency room doctors examined the donor's lungs with a bronchoscope and determined that they were suitable for transplant. Dr. Alberto told Tony that the donated lungs had belonged to a healthy, 18-year-old man. Tony consented to the surgery, and Dr. Alberto performed the transplant. Before transplanting the lungs, Dr. Alberto examined them again, and saw no signs of damage or disease. After completing the transplant, Dr. Alberto performed another bronchoscopy and determined that the lungs looked healthy and the transplant had been successful. Over the next four weeks, Tony received periodic physical examinations, chest x-rays, and blood and urine tests to monitor the continued success of the transplant.

Organ transplant patients must take immunosuppressive drugs to prevent rejection of the transplanted organs. Those drugs suppress the body's immune system response to infections and other diseases, including cancer, and allow those diseases to progress more swiftly. Dr. Alberto advised Tony of the risks of both immunosuppressive drugs and organ rejection before putting Tony on the donor transplant list and again before securing consent to the transplant surgery.

Two months after the transplant, Tony complained of coughing and pain. Dr. Alberto ordered a chest x-ray. The x-ray revealed a spot on Tony's lung. Dr. Alberto believed the spot indicated an infection, and prescribed a course of powerful antibiotics. The following month, Tony's symptoms had not improved, and Dr. Alberto ordered a CT scan. The scan revealed that the spot likely represented a tumor. Dr. Alberto referred Tony to an oncologist, who diagnosed aggressive lung cancer. Chemotherapy was unsuccessful, and Tony died of the cancer three months later.

The hospital's routine investigation of the medical causes of Tony's death included an review of the paperwork accompanying the organ donation. That paperwork indicated that the lung donor had in fact been a 31-year old woman who had smoked cigarettes daily for more than a decade.

At the trial, an experienced transplant surgeon at a different hospital testified that transplant teams commonly evaluate both donors' and individual organs' suitability by performing examinations of the donor and her individual organs, rather than relying on medical history. The surgeon explained that medical histories taken immediately after the donor's death can be unreliable, both because family and next of kin may not know the details of the donor's health, and because they are commonly traumatized by the donor's death.

At the close of the evidence, Dr. Alberto moved for a directed verdict in his favor, and the trial court granted the motion. Tony's estate has appealed.

Counsel for Appellant Tony's estate will have twelve minutes to argue that the Court of Appeals should reverse the trial court's judgement and remand the case for a new trial. Counsel may, if they choose, reserve up to two minutes of that time for rebuttal. After Appellant's argument, counsel for Appellee Dr. Alberto will have twelve minutes to argue in favor of affirming the trial court's decision. Counsel will be questioned by a designated Court of Appeals.

The oral argument will be held in class on Monday October 10. After the argument, each court of appeals (including the designated court) will write an opinion, no more than 250 words long, affirming or reversing the trial court's determination and explaining the reasoning underlying its decision. (Dissenting or concurring opinions are permitted only so long as the total number of words in a Court's opinions does not exceed 250.) Each court must upload a copy of its decision to the folder in Canvas before 5:00 pm on Monday October 10.

Counsel for Appellant : Ervin

Counsel for Appellee : Biles

Designated Court of Appeals: Maroulis

Remaining Courts of Appeals: Crouser
Henderson
Rollins