

October 12, 2016

Law 580: Torts

Section 2

**Oral Argument # 3**

In-class exercise for October 26, 2016

We are in a jurisdiction in which the *only* relevant authority is the material in the casebook on pages 260 to 381. 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.

It was 3:00 a.m., and Sonya was in the mood for a Taco Bell Doritos Cheesy Gordita Crunch. The local Taco Bell closed its indoor restaurant at midnight, but kept its drive-through window open every night until 4:00 am. Sonya had been drinking, and her blood alcohol level was over the legal limit. Nonetheless, she drove her car to the local Taco Bell and pulled up in the line for the drive-through window. Sonya noticed that the people in the car in front of her seemed to be taking a very long time placing their order. After 10 minutes, Sonya honked her horn. After 15 minutes, both the driver and the passenger of the car got out of the car, so that they could switch seats. Sonya yelled at them out her window, "Can we get moving? I'm hungry!" Romeko, the driver of the car, walked back to Sonya's car and stuck his head in her window, right next to her face. He said, "you got a fucking problem?" Sonya punched him in the nose. Romeko pulled a gun out of his pocket and shot Sonya. Sonya was severely injured, but ultimately survived the shooting. Romeko was killed the following week in an unrelated episode of gun violence. There was no security guard on the premises at the time of the incident. The Taco Bell does have a security guard on duty every evening, but the guard's shift ends at midnight, when the indoor restaurant closes its doors.

At trial, Sonya presented evidence that several other area restaurants that serve customers after midnight maintain security guards on the premises until closing. Taco Bell presented evidence that, in the past five years, the only episode at that particular location involving a weapon had been an armed robbery committed at noon on a Tuesday in July, 2011. At the close of the evidence, Taco Bell moved for a directed verdict in its favor, and the trial court denied the motion. The jury awarded Sonya \$350,000. The trial judge entered judgment on the verdict. Taco Bell has appealed.

Counsel for Appellant Taco Bell will have twelve minutes to argue that the Court of Appeals should reverse the trial court's judgment and remand the case for entry of a verdict in its favor. Counsel may, if they choose, reserve up to two minutes of that time for rebuttal. After Appellant's argument, counsel for Appellee Sonya 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 Wednesday, October 26. 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 October 26.

Counsel for Appellant: Rollins

Counsel for Appellee: Maroulis

Designated Court of Appeals: Henderson

Remaining Courts of Appeals: Ervin  
Crouser  
Biles