

November 4, 2016

Law 580: Torts

Section 2

**Oral Argument # 5**

In-class exercise for November 17, 2016

We are in a jurisdiction in which the *only* relevant authority is the material in the casebook on pages 873 to 891. 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.

Heart of Texas Hot Air Balloon Rides is located in San Marcos, Texas, 30 miles from the City of Austin. Heart of Texas Hot Air Balloon Rides offers hour-long rides in a hot air balloon for \$399 per passenger. It specializes in wedding and engagement celebrations. Heart of Texas supplies the balloon, a licensed balloon pilot, transportation to and from the launch site, and some bottles of chilled champagne. It encourages passengers who wish to help the pilot steer the balloon in its flight.

Early on a July Saturday morning, a hot air balloon operated by Heart of Texas and piloted by the company's owner, Skip, caught fire after hitting a high voltage electrical power line, and crashed into a pasture south of Austin. All 16 passengers were killed.

A National Transportation Safety Board (NTSB) investigation concluded from the messages received by the ground crew before the crash and the condition of the power lines 140 feet above the ground in the area of the accident that the pilot was probably beginning to land the balloon when it hit the electrical power line, exploded, and crashed. The explosion destroyed the balloon itself and any evidence it might have contained. The NTSB found no evidence of preexisting failures, malfunctions, or problems with that brand of balloon, and nothing in Heart of Texas's maintenance or flight records that indicated issues with the particular balloon. The weather that morning had been clear, except for small areas of patchy fog.

There are approximately 175 commercial hot air balloon ride operators in North America. Nine of them are in the state of Texas; four of those are within an 80 mile radius of Austin. In the past 20 years, the NTSB has recorded 11 balloon accidents in the state of Texas, three of them fatal.

The estate of Paige Plaintiff, one of the passengers who was killed, filed suit against Heart of Texas, seeking to recover damages for Paige's death. At trial, the evidence tended to show the facts recounted above. Over defendant's objection, the trial court ruled that operating a commercial hot air balloon ride business was an abnormally dangerous activity, and gave the following instruction to the jury:

"The plaintiff is presenting a claim that defendant operated a commercial hot air balloon ride business that provided hot air balloon rides to passengers, and that that activity caused her death. Piloting a hot air balloon is an abnormally dangerous activity. To receive a verdict in this matter, the plaintiff must prove

that it is more likely than not that:

1. The defendant engaged in piloting a hot air balloon as part of a commercial hot air balloon ride business
2. This activity caused plaintiff's death
3. Plaintiff's injury was of the type that might be expected to result from the dangers posed by operating a commercial hot air balloon ride business.

If you find that plaintiff has proven each of these three facts more likely than not, the defendant is responsible for the damages caused by its operation of a commercial hot air balloon ride business. The plaintiff need not prove that the defendant failed to exercise due care or engaged in any wrongful act in order to recover damages.”

The jury returned a verdict for Paige in the amount of two million dollars. Heart of Texas made a motion for judgment notwithstanding the verdict or, in the alternative, a new trial. The trial court denied the motion. Heart of Texas appeals.

Counsel for Appellant Heart of Texas 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 Paige 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 Thursday, November 17. 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 November 17.

Counsel for Appellant Heart of Texas:	Ervin
Counsel for Appellee Paige Plaintiff:	Rollins
Designated Court of Appeals:	Biles
Remaining Courts of Appeals:	Crouser Henderson Maroulis