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Critical Legal Thinking Cases

5.1 Assumption of the Risk The Greater Gulf State Fair, Inc. operated the Gulf State Fair in Mobile County, Alabama. One of the events at the fair was a mechanical bull ride, and participants paid money to ride the mechanical bull. A mechanical bull is a ride where the rider sits on a motorized device shaped like a real bull and the ride simulates a real bull ride as the mechanical bull turns, twists, and bucks. The challenge is to stay on the bull and not be thrown off it. A large banner above the ride reads "Rolling Thunder."

John Lilya and a friend watched a rider being thrown from the mechanical bull. Lilya also watched as his friend paid and rode the bull and was also thrown off. Lilya then paid the $5 admission charge and boarded the mechanical bull. He was immediately thrown off onto a soft pad underneath the bull. Lilya reboarded the bull for a second ride. The bull ride began again and became progressively faster, spinning and bucking to the left and right until Lilya fell off the bull. On the fall, Lilya landed on his head and shoulders, and he suffered a fractured neck. Lilya sued Gulf State Fair to recover damages for his severe injuries. Was riding the mechanical bull an open and obvious danger for which Lilya had voluntarily assumed the risk? *Lilya v. The Greater Gulf State Fair, Inc.*, 855 So.2d 1049, 2003 Ala. Lexis 57 (Supreme Court of Alabama, 2003)

5.2 Negligence Three teenagers, Sarah Mitchell, Adam Jacobs, and David Messer, were driving in Mitchell's car at 2:30 A.M. in Indianapolis, Indiana. Mitchell was driving the car, Jacobs was in the front passenger seat, and Messer was in the back seat. Jacobs suggested that they "jump the hills" on Edgewood Avenue, where the speed limit was 40 miles per hour. Mitchell speeded up her car to jump the "big hill" on Edgewood Avenue. The car crested the hill at 80 miles per hour, went airborne, and landed on the road. Mitchell lost control of the car, which sideswiped a Bell Telephone Company utility pole and spun clockwise until the car slammed into an Indianapolis Power & Light Company utility pole. Messer escaped from the burning wreckage but Mitchell and Jacobs died. The utility poles were legally placed twenty-five feet from Edgewood Avenue at the far edge of the companies' easement right of way. Susan Carter, the personal representative of the estate of Adam Jacobs, sued both utility companies, alleging that the companies were negligent in the placement of their utility poles along Edgewood Avenue. Are the utility companies negligent? *Carter v. Indianapolis Power & Light Company and Indiana Bell Telephone Company, Inc.*, 837 N.E.2d 509, 2005 Ind. App. Lexis 2129 (Court of Appeals of Indiana, 2005)

5.3 Proximate Cause One evening, Andrea Filer and her daughter were riding their horses along Riley Hill Road, a public highway in the Town of Salem, New York. At the same time, Megan Adams was jogging along the same road with her son in a stroller and two dogs by her side. Filer noticed that her horse's ears flickered and stiffened, apparently hearing sounds from behind. Filer turned and saw Adams. When Adams observed that Filer was having difficulty controlling her horse, she slowed to a walk. While Adams was still about 50 yards behind the riders, one of her dogs barked and the horses both abruptly broke into a canter or a run. Filer, who was not wearing a helmet, fell from her horse seconds later and sustained serious injuries. Plaintiff Filer sued Adams, alleging that Adams was negligent in following the horse riders too closely and letting her dogs bark, which she claimed spooked the horses. Defendant Adams asserted that Filer, an experienced rider, should have had control of her horse. Adams stated that she was a far enough distance from Filer and that walking with the stroller and the dog's bark were not the proximate cause of Filer's accident. Were Adams's activities the proximate cause of Filer's riding accident? *Andrea v. Adams*, 966 N.Y.S.2d 553, 106 A.D.3d 1417, 2013 N.Y. App. Div. Lexis 3831 (Appellate Division of the Supreme Court of New York, 2013)

5.4 Disparagement Zagat Survey, LLC, publishes the famous Zagat series of dining, travel, and leisure guides for different cities and locations. The Zagat restaurant guides lists and ranks each reviewed restaurant from 0 to 30 for categories such as food, décor, and service. These ratings are calculated from surveys of customers

of the restaurants, and the Zagat guide often quotes anonymous consumer comments.

Lucky Cheng's is a restaurant owned by Themed Restaurants, Inc., that is located in Manhattan, New York. Lucky Cheng's is a theme restaurant with a drag queen cabaret where female impersonators are both waiters and performers, and customer participation contributes to the entertainment. The *Zagat Survey of New York City Restaurants* rated the food at Lucky Cheng's as 9 and rated the décor and service as 15. The Zagat guide then stated,

> *God knows "you don't go for the food" at this East Village Asian-Eclectic—rather you go to "gawk" at the "hilarious" "cross-dressing" staff who "tell dirty jokes", perform "impromptu floor shows" and offer "lap dances for dessert"; obviously, it "can be exhausting", and weary well-wishers suggest they "freshen up the menu—and their makeup."*

Themed Restaurants sued Zagat for disparagement. Zagat defended, arguing that the ratings and comments about Lucky Cheng's restaurant that appeared in the Zagat guide were opinions and not statements of fact and were, therefore, not actionable as disparagement. Were the statements made in Zagat's restaurant guide statements of fact or statements of opinion? Is Zagat liable for disparagement? *Themed Restaurants, Inc., Doing Business as Lucky Cheng's v. Zagat Survey, LLC*, 811 N.Y.S.2d 38, 2005 N.Y. App. Div. Lexis 9275 (Supreme Court of New York, Appellate Division, 2005)

5.5 Negligence Curtis R. Wilhelm owned beehives and kept the hives on property he owned. John Black, who operated a honeybee business, contracted to purchase some beehives from Wilhelm. Black employed Santos Flores Sr. to help him pick up the beehives from Wilhelm. Black provided Flores with a protective suit to wear while picking up the beehives. Neither Wilhelm nor Black informed Flores of the danger of working with bees. After picking up beehives from Wilhelm's home, Black and Flores drove to remote property owned by Wilhelm to pick up other beehives. Flores opened the veil on his protective suit. After loading one beehive onto the truck, Flores started staggering and yelling for Flores sustained several bee stings, suffered anaphtic shock reaction, and died before an ambulance reach him. Flores's wife and children sued Wil and Black for negligence for failing to warn Flor the dangers of working with beehives and the pos ity of dying of anaphylactic shock if stung by a bee Wilhelm act negligently by failing to warn Flores o dangers of working with beehives? *Wilhelm v. Fl* 133 S.W.3d 726, 2003 Tex. App. Lexis 9335 (Cou Appeals of Texas, 2003)

5.6 Negligence One morning, after working at n Tim Clancy was driving a Chevrolet S-10 pickup t on State Road 231. Clancy fell asleep at the wheel c truck. Robert and Dianna Goad, husband and wife, riding separate motorcycles on the other side o road. Clancy's truck crossed the center line of the and collided with Dianna's motorcycle. The coll immediately severed Dianna's leg above the knee, she was thrown from her motorcycle into a water-ditch at the side of the road. Clancy was awakene the sound of the impact, and the truck veered int ditch as well. Robert stopped his motorcycle, ran to the scene of the accident, and held Dianna's hea of the water-filled ditch. Clancy called 911, and the paramedics arrived, Dianna was taken to the h tal. Dianna remained in a coma for two weeks. He had to be amputated. In addition, Dianna suffered a fractured pelvic bone, a fractured left elbow, a lacerated spleen, which had to be removed. Diann dured multiple skin graft procedures. At the time c trial, Dianna had undergone seven surgeries, she taken more than 6,800 pills, and her medical expe totaled more than $368,000. Furthermore, Dia medical expenses and challenges continue and ar pected to continue indefinitely. In addition, Diann been fitted with a C-leg, a computerized prosthetic A C-leg needs to be replaced every three to five yea full cost. Dianna sued Clancy to recover damages b on his negligence. Has Clancy been negligent? what amount of damages should be awarded to Dia *Clancy v. Goad*, 858 N.E.2d 653, 2006 Ind. App. 2576 (Court of Appeals of Indiana, 2006)

Ethics Cases

5.7 Ethics Case LaShawna Goodman went to a local Walmart store in Opelika, Alabama, to do some last-minute holiday shopping. She brought along her two young daughters and a telephone she had purchased earlier at Walmart to exchange. She presented the telephone and receipt to a Walmart employee, who took the telephone. Unable to find another telephone she wanted, Goodman retrieved the previously purchased telephone from the empl bought another item, and left. Outside, Goodman stopped by Walmart security personnel and wa cused of stealing the phone. Goodman offered to the Walmart employees the original receipt, bu Walmart employees detained her and called the lice. Goodman was handcuffed in front of her chil Walmart filed criminal charges against Goodman.

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Legal Thinking Cases

Implied-in-Fact Contract Selchow & Richter owns the trademark to the famous Scrabble. Mark Landsberg wrote a book on forming at Scrabble and contracted S&R to sion to use the Scrabble trademark. In requested a copy of Landsberg's manuprovided. After prolonged negotiations parties regarding the possibility of S&R's of the manuscript broke off, S&R brought Scrabble strategy book. No express conentered into between Landsberg and sued S&R for damages for breach of contract. Is there an implied-in-fact contract parties? *Landsberg v. Selchow & Richter* F.2d 1193, 1986 U.S. App. Lexis 32453 Court of Appeals for the Ninth Circuit)

Unilateral Contract G. S. Adams Jr., of the Washington Bank & Trust Co., Bickham. An agreement was reached agreed to do his personal and corpobusiness with the bank, and the bank agreed money at 7.5 percent interest per anwould have ten years to repay the loans. years, the bank made several loans to percent interest. Adams then resigned from bank notified Bickham that general ecomade it necessary to charge a higher rate both outstanding and new loans. Bickham for breach of contract. Was the conor a unilateral contract? Does Bickham *Washington Bank & Trust Company*, 515 So.2d 457, 1987 La. App. Lexis 10442 (Court of Appeal of Louisiana)

9.3 Implied-in-Fact Contract For six years, Lee Marvin, an actor, lived with Michelle Marvin. They were not married. At the end of six years, Lee Marvin compelled Michelle Marvin to leave his household. He continued to support her for another year but thereafter refused to provide further support. During their time together, Lee Marvin earned substantial income and acquired property, including motion-picture rights worth more than $1 million. Michelle Marvin brought an action against Lee Marvin, alleging that an implied-in-fact contract existed between them and that she was entitled to half of the property that they had acquired while living together. She claimed that she had given up a lucrative career as an entertainer and singer to be a full-time companion, homemaker, housekeeper, and cook. Can an implied-in-fact contract result from the conduct of unmarried persons who live together? *Marvin v. Marvin*, 18 Cal.3d 660, 557 P.2d 106, 134 Cal. Rptr. 815, 1976 Cal. Lexis 377 (Supreme Court of California)

9.4 Objective Theory of Contracts Al and Rosemary Mitchell owned a small secondhand store. The Mitchells attended Alexander's Auction, where they frequently shopped to obtain merchandise for their business. While at the auction, they purchased a used safe for $50. They were told by the auctioneer that the inside compartment of the safe was locked and that no key could be found to unlock it. The safe was part of the Sumstad Estate. Several days after the auction, the Mitchells took the safe to a locksmith to have the locked compartment

opened. When the locksmith opened the compartment, he found $32,207 in cash. The locksmith called the City of Everett Police, who impounded the money. The City of Everett commenced an action against the Sumstad Estate and the Mitchells to determine who owns the cash that was found in the safe. Who owns money found in the safe? *City of Everett, Washington v. Mitchell*, 631 P.2d 366, 1981 Wash. Lexis 1139 (Supreme Court of Washington)

Ethics Cases

9.5 Ethics Case The Lewiston Lodge of Elks sponsored a golf tournament at the Fairlawn Country Club in Poland, Maine. For promotional purposes, Marcel Motors, an automobile dealership, agreed to give any golfer who shot a hole-in-one a new Dodge automobile. Fliers advertising the tournament were posted in the Elks Club and sent to potential participants. On the day of the tournament, the new Dodge automobile was parked near the clubhouse, with one of the posters conspicuously displayed on the vehicle. Alphee Chenard Jr., who had seen the promotional literature regarding the hole-in-one offer, registered for the tournament and paid the requisite entrance fee. While playing the 13 hole of the golf course, in the presence of the other members of his foursome, Chenard shot a hole-in-one. When Marcel Motors refused to tender the automobile, Chenard sued for breach of contract. Was the contract a bilateral or a unilateral contract? Does Chenard win? Is it ethical for Marcel Motors to refuse to give the automobile to Chenard? *Chenard v. Marcel Motors*, 387 A.2d 596, 1978 Me. Lexis 911 (Supreme Judicial Court of Maine)

9.6 Ethics Case Loren Vranich, a doctor practicing under the corporate name Family Health C P.C., entered into a written employment contrac hire Dennis Winkel. The contract provided for an nual salary, insurance benefits, and other employn benefits. Another doctor, Dr. Quan, also practiced Dr. Vranich. About 9 months later, when Dr. Quar the practice, Vranich and Winkel entered into an modification of their written contract whereby Wi was to receive a higher salary and a profit-sharin nus. During the next year, Winkel received the incre salary. However, a disagreement arose, and Winkel to recover the profit-sharing bonus. Under Mor law, a written contract can be altered only in w or by an executed oral agreement. Dr. Vranich ar that the contract could not be enforced because i not in writing. Does Winkel receive the profit-sh bonus? Is it ethical of Dr. Vranich to raise the de that the contract is not in writing? *Winkel v. Fa Health Care, P.C.*, 668 P.2d 208, 1983 Mont. Lexi (Supreme Court of Montana)

Notes

1. *Rebstock v. Birthright oil & Gas Co.*, 406 So.2d 636, 1981 La.App. Lexis 5242 (Court of Appeal of Louisiana).
2. *Restatement (Second) of Contracts*, Section 1.
3. *Restatement (Second) of Contracts*, Section 1.
4. *Restatement (Second) of Contracts*, Section 6.