

PART II

QUESTION:

You have been retained by the administration of Abalone University. You are asked to advise on the liability of the University and all parties, to those injured in the following circumstances. Where appropriate advise on the damages that could be recovered by aggrieved parties.

Abalone University established a counseling service about a decade ago to support its students who needed help with the stress that accompanies living and studying in the modern University in contemporary times. Beatrice Beatle a freshman in the college seeks the help of the counseling service and is taken on as a patient of Dr. Cheryl who is employed by the University. She is qualified as a clinical psychologist. Beatrice tells Dr. Cheryl that she is angry and depressed in being rejected at “rush”^{*} for membership of the Alpha and Omega Sorority at the University. Her mother had been a national office holder in the same Sorority and it had been the family ambition that Beatrice would follow in her mother’s footsteps. She tells Dr. Cheryl: “My life is ruined. I hate those horrible snobs who have done this to me. Vengeance is sweet.” Dr. Cheryl’s notes indicate that Beatrice was shouting and highly agitated. She prescribed for her a new drug Zoliff made by Zip Pharmaceuticals that had just received FDA approval. The drug is designed to stabilize mood swings and counter depression. Deciding that the disclosure was given in confidence Dr. Cheryl tells no one.

Beatrice also declared her deep loathing for the members of Alpha and Omega to her boyfriend Dwayne. He revealed that he had a friend who ran a gun show in his home state and last summer he had fired the Bushmaster Patrolman’s Carbine, an assault rifle that “can do real damage”. She said:” Yeah that’s the talk!” The next weekend Dwayne visited the shop run by his friend Errol who sold him two of the exact rifles without requiring the background check and registration required under state law. On returning to campus Dwayne showed Beatrice the rifles. After spending part of the evening with Dwayne drinking cocktails and smoking pot (marijuana) Beatrice waited for Dwayne to fall asleep. She then took one rifle, hid in the bushes outside the Alpha and Omega sorority house, and fired a volley of bullets at a person she thought was one of the members of Alpha and Omega who had thwarted her ambitions. In fact she shot Francine who was a high school student visiting the University as part of her search for a suitable University in which to continue her education. Francine was badly wounded in the shoulder. Francine had been matched with Viola a sorority member for her visit. The University guidelines for visiting high school students stipulate that the mentor (i.e. the student matched with the visitor) is to stay with the visitor at all times. Viola while at a party with Francine was invited to another party by a friend. She readily accepted and, giving Francine the sorority house key, told her

* In American colleges “rush” is a time usually in the first year of college (the “freshman year”) where college fraternities (for men), and sororities (for women), select new members.

to return to the house. Beatrice running from the scene fell into an unlighted pit left by a University maintenance crew. She was knocked out and suffered a concussion.

The President is awoken with the news that a student had been shot. She is told that the shooter with the rifle in her possession had been apprehended in the ditch. Not wanting to alarm students and faculty late at night and acting on the advice that the “shooter” had been apprehended she did not close the campus and put it on high alert. She called Francine’s parents who were stricken to learn that their high school daughter had been shot.

The surgical team at Local Hospital operated on Francine and extracted the bullets. Her arm will recover full functionality although she will be scarred. Beatrice was taken under guard to Local Hospital also. When she regained consciousness she complained of a terrible headache. A nurse gave her a painkiller and noted this on her chart. The attending doctor who was accompanied by medical students allowed a medical student to read the chart while he was receiving the good news on Francine from a nurse on the floor. In fact her brain was swollen because she had ingested twice the recommended dose of Zoliff tablets, thinking they would clear her mind for the shooting, and this combined with her alcohol and pot (marijuana) consumption caused an unusual blood flow to her brain. A warning on the bottle had stated: “This prescription is not to taken with alcohol or other recreational drugs. Take no more than one pill per day”. Dr. Cheryl had given her no oral warning. She suffered irreversible brain damage.

Dwayne, hearing of this imbroglio,** attempted to shoot himself with the other assault rifle. He missed but fired into a chemistry experiment he was conducting in his dorm room. He had often done his experiments in his room rather than in the chemistry lab. The chemical in his destroyed apparatus caused a gaseous mixture when it came into contact with pot (marijuana) that sent plums of toxic phosphorous gas into the University heating and air condition system. All buildings had to be evacuated and operations of the University shut down for five days.

In this jurisdiction the courts have adopted a pure comparative fault rule and a rule that apportions liability on a pure comparative fault basis between tortfeasors.

** an acutely painful or embarrassing misunderstanding