

Law 580 Torts
Section 2

About In-Class Oral Argument Exercises:

On September 26, we will be having the first oral argument exercise. You have been divided into six teams. In the first argument, one team is assigned to act as lawyers for the plaintiff, and another team is assigned to act as the lawyers for the defendant. The remaining four teams are assigned to act as courts. In this particular exercise, plaintiff appeals from a dismissal of her complaint. The exercise tells you the facts alleged in the complaint and the lower court's disposition, but does not tell you either the theory on which plaintiff brought suit or the theory on which defendant argued that it was entitled to prevail. Figuring out what theories best support each position is part of your assignment. In each assignment, I identify the relevant authority in the casebook. All arguments should proceed on the assumption that that material is the *only* law in the jurisdiction that is relevant to the appeal.

In some cases, the courts will be faced with a choice between conflicting case law, a choice of which case law to apply, or a choice of how to interpret language in a case as applied to these facts. When such a choice appears, teams operating as courts should make the choices they believe to be the best ones, based on counsels' arguments and the team members' own reading of the case law. There is no right result; I have designed all of the problems to permit room for a decision in either party's favor.

Teams assigned to represent the appellant and appellee should meet and decide what arguments and case authority best support their positions, what arguments and case authority they would expect their opponents to raise, and what arguments and case authority they might offer to rebut their opponents' reasoning. I expect every member of the team to stand up in front of the class during that team's presentation. The team may choose to have one member present its argument or to divide the argument among several members if it prefers. Teams assigned to act as appellate courts should meet to decide what issues (and case authority) are key to resolving the appeal.

(If you are curious what an appellate oral argument looks like, you may want to watch videos posted on the Internet. The Michigan Supreme Court, like many state Supreme Courts, posts recordings of its oral arguments online. The videos at <<https://www.youtube.com/watch?v=TOABe3fLi2g>> and <<https://www.youtube.com/watch?v=z5IsTeecnEM>> are examples of recent arguments that involved tort claims. Our argument exercises will be both simpler and shorter than either of these real examples.)

One court is assigned to be the "Designated Court of Appeals" -- that court will have the burden of asking questions of counsel during the argument, as real courts do during real arguments. For the first (and only the first) oral argument, I will help out by asking some questions as well. All courts, including the designated court, must write a short opinion (no more than 250 words) resolving the appeal. That opinion may cite any case (including note cases or

cases cited or described in cases) that appears in the designated page range of the Casebook. The opinions should be uploaded to Canvas no later than 5:00 pm on the day of oral argument.

Every team will receive a grade for its overall performance on each team assignment. The sum of each team's grades for all team assignments will be added to the exam grade earned by each student on that team at the end of the semester.

Here are the team assignments. You will be on the same team for the entire semester:

1. ROLLINS

- Thomas Bourneuf
- Kristin Froehle
- Allison Horwitz
- Max Lubin
- Thea Marriott
- Michelle Ngo

2. MAROULIS

- Dale Bellitto
- Mahalia Kahsay
- Peter Liu
- YingChun Ni
- Sinead Redmond
- David Yang

3. HENDERSON

- Caitlin Harrington
- Cleo Hernandez
- John Jee
- Hinh Tran
- Andrew Weiner
- Dustin Womack
- Yi Zhou

4. ERVIN

- John Heise
- David Howe
- Nicholas Perry
- Jacob Plotnik
- Ian Sander
- Rasheed Stewart

5. CROUSER

- Erica Christianson
- Timothy Featherston
- Patrick Kennedy
- Lucas Minich
- Anna Rasmussen
- William Schoof
- Jens Thomsen

6. BILES

- Nadine Abdallah
- Joan Campau
- Trevor Jorgensen
- Sarah Mezera
- Trevor Parkes
- Emily Van Dam

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Section 2
Oral Argument # 1
In-class exercise for September 26, 2016

We are in a jurisdiction in which the *only* relevant authority is the material in the casebook on pages 51 to 178. 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.

Beryllium is an element, number 4 on the periodic table, with significant industrial applications. Exposure to beryllium dust can cause serious, sometimes fatal, lung disease. The federal Occupational Safety and Health Administration ["OSHA"], created in 1970, first adopted a rule designed to limit worker exposure to beryllium in 1971. Shortly after the adoption of the rule, health researchers reported that exposure to far lower levels of beryllium than the regulations permitted could cause life-threatening lung disease. In 1975, OSHA announced that it would adopt more stringent regulations, but failed to do so. OSHA has announced its intention to adopt stricter rules several times in the intervening years, but has not yet done so, in part because of industry resistance. OSHA is currently considering a proposed rule designed to reduce workplace exposure to beryllium by lowering the allowable exposure to beryllium to one tenth the level specified in the 1971 regulation.

AMB has long used beryllium in its manufacture of ceramic and glass components for technical and scientific instruments. AMB's workplace safety precautions were at all times congruent with the practices of its competitors and sufficient to satisfy the 1971 OSHA rule. When AMB's employees suffered illness or injury due of beryllium exposure, those employees' claims were resolved under the state workers compensation system, which compensates employees for workplace-related injuries regardless of any fault on the part of the employer, but prohibits employees from filing civil suits against their employers for such injuries.

Paul and Gregory were friends and roommates who worked at the AMB manufacturing plant from 1980 through 1995, making components for scientific instruments. The AMB manufacturing process exposed both Paul and Gregory to large amounts of beryllium dust. In 1981, Paul began dating Brenda. After a few years, Brenda married Paul and moved into the apartment he shared with Gregory. The three roommates shared responsibility for household chores, including laundry. In 1996, Paul started a new job with a different company, and Brenda and Paul moved out of the apartment into a house nearby. Brenda has recently been diagnosed with severe lung disease due to beryllium poisoning. She believes that she was exposed to beryllium dust carried home from work on Paul's and Gregory's clothing and shoes.

Brenda filed a negligence suit against AMB, alleging the above facts. AMB moved to dismiss Brenda's complaint. The trial court granted AMB's motion, and Brenda has appealed.

Counsel for Appellant Brenda will have twelve minutes to argue that the Court of Appeals

should reverse the trial court's judgement and remand the case for trial. Counsel may, if they choose, reserve up to two minutes of that time for rebuttal. After Appellant's argument, counsel for Appellee AMB 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 September 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 Monday September 26.

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