

## **ESSAY QUESTION NO. 1**

### **Answer this question in booklet No. 1**

Peter operated a chicken farm on land he owned in Alaska. During the warmer months, he let his chickens roam free over a large field because they remained healthier. Peter had a contract to sell chickens to Fancy Grocery all summer long. Peter got the contract with Fancy Grocery because his chickens were healthy.

Peter had a pet rooster that he loved very much. The rooster stayed in the fields with the chickens during the summer.

Daniel also had a chicken business. Daniel was envious of the contract that Peter had. Daniel wanted to sell his chickens to Fancy Grocery. Daniel bought some grain and laced it with a chemical that he thought would make chickens sick. He drove to Peter's chicken farm one night. Although it was late, there was still plenty of light, and Daniel could see the chickens roaming around the field. Daniel cut a hole in the fence around the field and began spreading the contaminated grain on the ground all over the field. Daniel knew that Peter had a pet rooster and noticed that Peter's rooster was eating the grain as were the chickens.

The next morning, Daniel told the manager at Fancy Grocery that he had heard that Peter was a careless chicken farmer and that Peter's chickens had the chicken plague, a disease that makes the chickens taste bad when they are cooked. The chicken plague is very hard to eradicate from a farm. Daniel offered to sell his chickens to Fancy Grocery. The manager did not want to take a chance that the chickens he was going to sell were going to taste bad, so he called Peter and told him that he was not going to take delivery of any more chickens.

Peter went out to the field immediately to check on his chickens. All of the chickens and his rooster were dead. Peter went into shock and became very depressed. He eventually gave up chicken farming because no one would buy his chickens anymore.

1. Discuss all claims that Peter might have against Daniel.

## GRADER'S GUIDE

### \*\*\* QUESTION NO. 1 \*\*\*

#### **SUBJECT: TORTS**

#### **1. Defamation (25%)**

Alaska does not distinguish between libel and slander. Alaska has the tort of defamation which has four elements: (1) a false and defamatory statement; (2) an unprivileged publication to a third party; (3) fault amounting at least to negligence on the part of the publisher; and (4) the existence of either “per se” actionability or special harm. Odom v. Fairbanks Memorial Hospital, 999 P.2d 123, 130 (Alaska 2000). A statement is actionable “per se” if the words used are so “unambiguous as to be reasonably susceptible of only one interpretation – that is, one which has a natural tendency to injure another’s reputation.” Id. A statement is defamatory if it tends to harm the reputation of another so as to lower him in the estimation of the community or to deter third persons from associating or dealing with him. Briggs v. Newton, 984 P.2d 1113, 1120-21 (Alaska 1999). A statement is conditionally privileged when the maker reasonably believes that the statement affects a sufficiently important interest of the recipient and the recipient is a person to whom the statement’s publication is otherwise within the generally accepted standards of decent conduct. French v. Jadon, Inc., 911 P.2d 20, 33 (Alaska 1996). A privilege is abused if the publisher knows the statement is false or publishes the statement for some purpose other than that for which the privilege is given. Jones v. Central Peninsula General Hospital, 779 P.2d 783, 790 (Alaska 1989).

Although some jurisdictions may frame defamation of a business as business disparagement, Alaska’s tort of defamation includes defamation of a business. Briggs v. Newton, 984 P.2d 1113, 1121-22 (Alaska 1999) involved a claim that one contractor defamed another by criticizing the competency of his work, and Lull v. Wick Construction Co., 614 P.2d 321, 323-24 (Alaska 1980) involved a claim of defamation regarding a contractor’s comments about a subcontractor’s performance.

Daniel made a false and defamatory statement. He told the manager at Fancy Grocery that Peter was a careless chicken farmer and Peter’s chickens had the chicken plague. The statement was false because he poisoned the chickens. The statement was defamatory because it tended to deter people from wanting to deal with Peter. The manager at Fancy Grocery chose not to deal with Peter because of the risk that the chickens would taste bad. Daniel’s publication is normally the type that would be privileged because a person could reasonably believe that the manager at the grocery store would want to know whether his supplier’s chickens had a disease that would make their meat taste bad. Furthermore, it does not seem outside the bounds of decency to convey the

information to the manager. However, Daniel cannot assert the privilege because he knew the statement was false. Moreover, the facts indicate that Daniel published the statement because he wanted to interfere with Peter's contract rather than convey important information to the manager about a supplier. Daniel acted with malice when he made the statement, for the facts indicate that he intentionally made the false statement. The statement was actionable per se because it was unambiguous. It could only be interpreted as a statement injuring Peter's reputation. Peter also suffered special harm because he lost his contract with Fancy Grocery and eventually had to give up chicken farming because no one would buy his chickens.

## **2. Tortious Interference with a Contract (20%)**

Tortious interference with a contract has six elements: (1) an existing contract between the plaintiff and a third person; (2) defendant's knowledge of the contract and intent to induce a breach; (3) breach; (4) wrongful conduct of the defendant causing the breach; (5) damages; and (6) absence of privilege or justification for the defendant's conduct. K & K Recycling, Inc. v. Alaska Gold Co., 80 P.3d 702, 716 (Alaska 2003). A person has a privilege to interfere with a contract if the person has a direct financial interest in the contract. Waldroup v. Lindman, 28 P.3d 293, 297 (Alaska 2001).

Peter can probably satisfy all of the elements for tortious interference with a contract. He had an existing contract with Fancy Grocery. Daniel knew about the contract because he was envious of it. The facts strongly suggest that Daniel intended to induce the breach. He was envious of the contract and he wanted to sell his chickens to Fancy Grocery. He also defamed Peter in a manner that would make it likely that Fancy Grocery would refuse to do business with Peter anymore. Although the terms of the contract are not specified, the facts state Peter had a contract to sell his chickens to Fancy Grocery all summer long. Thus, it appears that the manager breached the contract when he said he would not take delivery of any more chickens from Peter. Daniel's conduct was wrongful because he used defamation to induce the breach. Daniel did not have a privilege to interfere with the contract because he did not have a direct financial interest in the contract between Peter and Fancy Grocery.

## **3. Conversion and Trespass to Chattels (15%)**

Peter will be able to establish the tort of conversion. Conversion has three elements: (1) the plaintiff must have a possessory interest in the property; (2) the defendant intentionally interfered with the plaintiff's possession; and (3) the defendant's actions were the legal cause of the plaintiff's loss of property. K & K Recycling, Inc. v. Alaska Gold Co., 80 P.3d 702, 717 (Alaska 2003). Trespass

to Chattels is essentially conversion but to a lesser degree. Id. A person commits trespass to chattels when a party intentionally dispossesses another of a chattel or intentionally uses or interferes with a chattel in another's possession. Id. at n. 26. Destruction of a chattel is conversion rather than trespass. Mitchell v. Heinrichs, 27 P.3d 309, 311 n.1 (Alaska 2001). Killing an animal is conversion. Id.

Peter had a possessory interest in his chickens and his rooster. Daniel intentionally interfered with that interest when he spread contaminated grain on the ground. Daniel may not have intended to kill the birds because the facts indicate that he thought the chemical would make the chickens sick. However, he certainly intended to interfere with Peter's possessory interest in the chickens, for he at least intended to make them sick. The facts do not expressly link the death of the birds to the contaminated grain. The facts do not, however, offer any other reason for the sudden death of the birds. Daniel's conduct was the legal cause of the loss of the chickens because he killed them with the contaminated grain.

Daniel also cut a hole in Peter's fence. Thus, Daniel intentionally interfered with Peter's possessory interest in the fence, and Daniel's conduct legally caused the injury to Peter's interest in having a complete fence around the field. However, this might only amount to trespass to a chattel, for cutting the hole has not necessarily destroyed the fence. On the other hand, one could argue that a fence with a hole in it does not have any value as a fence, and thus, it was a conversion.

#### **4. Trespass (15%)**

Trespass is the unauthorized intrusion or invasion of another's land. Mapco Express, Inc. v. Faulk, 24 P.3d 531, 539 (Alaska 2001). Trespass may result from negligent, intentional, or ultra hazardous conduct. Parks Hiway Enterprises, LLC v. CEM Leasing, Inc., 995 P.2d 664 (Alaska 2000). The basic elements of trespass are ownership or possession, invasion, and damages. Mapco Express, 24 P.3d at 539; Brown Jug, Inc. v. International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, Local 959, 688 P.2d 932, 938 (Alaska 1984). However, a person who intentionally enters another's land is liable even if there are no damages. Brown Jug, 688 P.2d at 938. A person is liable for a negligent or reckless entry only if the invasion causes injury. Id. Trespass can result from causing a thing or object to invade the land. Id.; See also Mapco Express, 24 P.3d at 539-40 (invasion of property by water).

Peter owned the land on which he operated his chicken farm. Daniel invaded or intruded on that land in two ways. First, he walked on the land when he spread the contaminated grain out, and second, the spreading of the grain was

an intrusion because it left something on the land that was not there before. Peter would not have to prove damages because the facts indicate that the intrusion was intentional. Daniel cut a hole in the fence and deliberately walked around the field spreading the contaminated grain.

## **5. Intentional Infliction of Emotional Distress (20%)**

The Alaska Supreme Court has recognized a cause of action for intentional infliction of emotional distress for the intentional or reckless killing of a pet. Richardson v. Fairbanks North Star Borough, 705 P.2d 454, 456 (Alaska 1985). A cause of action lies when the defendant, through extreme or outrageous conduct, intentionally or recklessly causes severe emotional distress or bodily harm to another. Id. The defendant's offensive conduct must be very close to that which is necessary for a punitive damages claim. Id. The challenged conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious, and utterly intolerable in a civilized society." Mitchell v. Heinrichs, 27 P.3d 309, 311-12 (Alaska 2001). A judge must make a threshold decision on the severity of the emotional distress and the outrageousness of the conduct. Id.

Daniel's conduct involves two separate acts that could support a claim for intentional infliction of emotional distress: he killed Peter's pet rooster and he destroyed Peter's business by killing his chickens. Alaska recognizes that killing a pet may form the basis of an intentional infliction of emotional distress claim. Mitchell v. Heinrichs, 27 P.3d 309, 311-12 (Alaska 2001). Alaska has also recognized that outrageous behavior in a business setting can also form the basis of an intentional infliction of emotional distress claim. Odom v. Fairbanks Memorial Hospital, 999 P.2d 123 (Alaska 2000)(hospital denied doctor privileges) and Oaksmith v. Brusich, 774 P.2d 191 (Alaska 1989)(actions interfering with leasehold and business).

Daniel's poisoning of the chickens was intentional because he spread the contaminated grain on the ground with that intent in mind. The facts also indicate that Daniel recklessly or knowingly poisoned Peter's pet rooster. Daniel noticed that the rooster was eating the grain along with the chickens. Daniel was reckless because he consciously disregarded the risk that the rooster would eat the grain. The facts imply that Daniel kept spreading the grain after seeing the rooster eat it, in which case Daniel acted knowingly. Daniel's conduct was rather outrageous. He deliberately trespassed on Peter's land and spread contaminated grain on the ground in order to poison chickens so that they became sick. A judge and a jury would likely conclude that Daniel's conduct was beyond the pale.

The facts are not as clear, however, about the extent of Peter's emotional distress. The facts indicate that, upon seeing the field, Peter went into shock

and became very depressed. The facts are ambiguous, however, for it is not clear how distressed Peter was. Peter may have become clinically depressed for an extended period of time, in which case he probably suffered sufficient distress.

Peter may have a claim for intentional infliction of emotional distress. The ambiguity in the facts regarding the source and depth of Peter's depression preclude a conclusive answer.

Alaska allows negligent infliction of emotional distress claims if the victim is a bystander who directly witnesses physical injury or if the victim is owed a pre-existing duty by the tortfeasor. *Hagen Ins. v. Roller*, \_\_\_ P.3d \_\_\_, 2006 WL 1475 93, \*2 n.6 (Alaska 2006). Neither of these situations apply.

## **6. Unfair Trade Practices (5%)**

Alaska statute 45.50.471 (b)(7) prohibits the disparaging of another's goods by false or misleading representation of fact. As noted above, Daniel falsely told Fancy Grocery that Peter's chickens had the plague. Alaska statute 45.50.531 gives a plaintiff a private right of action and establishes the damages as \$500 or three times the actual damages, whichever are greater. The Alaska Supreme Court recently dealt with a case involving an unfair trade practices claim by a commercial entity. *Alaska Construction & Engineering, Inc., v. Balzer Pacific*, 130 P.3d 932 (Alaska 2006). Although the court did not directly address the issue, the court's lack of comment suggests that it would apply the statute in a commercial situation. Nothing in the statute limits its application to consumers.