

Negligence Law Section

Negligence Law Section Quarterly

Winter 2019

“Michigan Negligence Law Trivia”

Mark Granzotto, Mark Granzotto PC

It is time for another round of Michigan negligence law trivia, in which we will once again shine a bright light on the obscure and the recondite in negligence law in this state. The ground rules for this trivia challenge remain the same: you can use Westlaw, Lexis or any other legal research tool of your choice. You may not, however, consult an appellate attorney. Good luck to all.

1. Little Joey Alfono had the misfortune of causing his good buddy, Royal, to lose the sight in one of his eyes. His misfortune became the basis for one of the most cited Michigan Supreme Court decisions exploring the elements of a negligence claim. What did Joey use to injure his friend? Hint: Joey paid only ten cents for this item.
2. The blustery former owner of the New York Yankees, George Steinbrenner, has a special place in Michigan negligence law. Name the case in which the taking of Steinbrenner's name in vain became an important part of a Michigan Supreme Court's decision.
3. A tort case addressing the question of whether the plaintiff's claim was barred by the exclusive remedy provision of the Workers Compensation Act managed to generate what is most likely the single shortest published decision ever written by a panel of the Michigan Court of Appeals. Name the case. Hint: This trivial question is more than twice as long as the Court of Appeals opinion in question.

4. Name the Michigan Court of Appeals decision that, if allowed to stand, would have required the dismissal with prejudice of a substantial majority of all Michigan medical malpractice actions that were pending at the time that opinion was rendered.
5. Gordon Piercefield was injured when a shotgun his brother was using exploded due to a defective shell. The explosion almost proved to be the end of Gordon. But, the lawsuit that followed did, in fact, prove to be the demise of a particular defense to a product liability claim. Name this now-deceased defense.
6. Name the former member of the Michigan Supreme Court who less than fondly compared the common law to a drunken, toothless grandfather whose uncouth behavior upsets an otherwise genteel garden party.
7. Justice Thomas Cooley is one of the very few justices on the Michigan Supreme Court to write an entire treatise on the law of tort. He also wrote a Supreme Court decision over 150 years ago that remains perhaps the best examination of the role that juries are to play in deciding the question of negligence. Name that opinion.
8. Thomas Lowe caused damage to William L. Fisher's beautiful oak tree when he ran into that innocent tree with his Chevrolet. Fisher's tort suit for damages to his tree proved to be a loser on appeal. But it did prompt Court of Appeals Judge John H. Gillis to channel his inner Joyce Kilmer, authoring one of the very few Michigan Court of Appeals decision written in verse. Name this poetic decision.
9. William L. Fisher, the aggrieved tree owner in the previous question, handled that case on an in pro per basis. Mr. Fisher was not merely a tree-lover, he was also an attorney. Earlier in his career, Mr. Fisher was again both the injured party and his own attorney in a significant Michigan Supreme Court case that first adopted the view that a product manufacturer has no duty to warn of dangers that are obvious to all. Name that Supreme Court case.

10. Four-year old Alyssa Benejam was attending her first baseball game at Tiger Stadium and sitting very close to the action when the batter's bat was shattered by a pitch. A fragment from the broken bat struck her hand, causing her serious injury. Alyssa sued the Detroit Tigers in negligence and won a sizable jury verdict. That verdict, however, was later reversed by the Michigan Court of Appeals. What former American League Most Valuable Player was at the plate when Alyssa sustained her injury?
11. A traffic accident that occurred at the intersection of Schoehnerr Road and Plumbrook in the City of Sterling Heights resulted in a lawsuit that led to the judicial adoption of the doctrine of pure comparative fault. Name the case.
12. Name the 1958 Michigan Supreme Court decision that is the subject of an actual joke contained in Prosser and Keeton On Torts (5th ed)?

THE ANSWERS

1. Little Joey was using his new slingshot when he put out his friend's eye. The whole sordid story is recounted in *Moning v Alfonso*, 400 Mich 425 (1977).
2. Steinbrenner, who was particularly easy to vilify, was the subject of plaintiff's counsel's somewhat incendiary closing argument in an admiralty case filed against one of Steinbrenner's shipping companies. Plaintiff's counsel's closing proved a bit too incendiary, resulting in a reversal of the jury's verdict in favor of the plaintiff. *Reetz v Kingsman Marine Transit Co*, 416 Mich 97 (1982).
3. By my count, the opinion in *Denny v Radar Industries Inc.*, 28 Mich App 294 (1970), is less than thirty words long.
4. *Apsey v Memorial Hospital*, 266 Mich App 666 (2005). Fortunately for all concerned, that decision was reversed in *Apsey v Memorial Hospital*, 477 Mich 120 (2007).

5. The Supreme Court in *Piercefield v Remington Arms*, 375 Mich 85 (1965), laid to rest once and for all the defense of lack of privity in a product liability case. *Piercefield* is also one of those wacky Michigan Supreme Court cases in which the reported version of the case places the dissenting opinion in front of the majority opinion. My understanding is that the Supreme Court decided to publish a few decisions in this way just to see who was paying attention.
6. These terribly unflattering things were said about the common law by former Chief Justice Robert P. Young. Young, A Judicial Traditionalist Confronts The Common Law, 8 Tex Rev L & Pol 299 (2004).
7. *Detroit & Milwaukee Railroad Corp v VanSteinburg*, 17 Mich 99 (1868).
8. *Fisher v Lowe*, 122 Mich App 418 (1983). While the *ars poetica* exhibited by Judge Gillis may have been impressive, he may well have been outshone by the good folks at West Publishing in the Synopsis and Headnotes that accompanied the opinion. Since this is a trivia quiz, it should be noted that Judge Gillis was also the author of *Denny*, the answer to Question 3 above. This means that Judge Gillis was equally adept at both terse and verse. *Fisher* is not the only Michigan judicial opinion in verse. For a judicial ruling fittingly summarized in rap, check out Judge Deborah Servitto's (and staff's) decision in *Bailey v Mathers*, 2003 WL 22410088, fn. 11
9. Mr. Fisher was carrying a crate with glass milk bottles when he slipped on some ice and fell. In the fall, the bottles broke and Mr. Fisher seriously cut his hand. He sued the manufacturer of the bottles apparently on a failure to warn theory. The Supreme Court rejected that claim in *Fisher v Johnson Milk Co*, 383 Mich 158 (1970).
10. This one was a bit tricky - a curve ball so to speak - in that, for reasons unknown, the Court of Appeals decision reversing the verdict in Alyssa's favor, *Benejam v Detroit Tigers, Inc.*, 246 Mich App 645 (2001), did not identify who was batting when she was injured. But, a little bit of research reveals that it was none other than Jose Conseco, then playing for the Texas Rangers, whose maple bat was shattered by the pitch. See P. Thorton, Legal Decisions That Shaped Modern Baseball, at 229-230. By the way, this was the same Jose

Conseco who once famously contributed to a major league home run with the top of his head. But, that is the subject of a completely different trivia quiz.

11. *Placek v City of Sterling Heights*, 405 Mich 638 (1979).
12. *Spence v Three Rivers Builders & Masonry Supply, Inc.*, 353 Mich 120 (1958). In that case, Mrs. Spence owned cottages that were built from defective cinder blocks and she sued the manufacturer of the blocks. Departing from established law, the Court's majority, in an opinion written by Justice John Voelker, held that Mrs. Spence could sue for breach of warranty despite the fact that she was not in privity of contract with the defendant. The Prosser treatise, after giving *Spence* its due as a transitional decision away from application of a strict privity requirement, cheekily added a footnote memorializing the death of the defendant's privity defense: "This was, appropriately enough, from the point of view of the defendants, an opinion of Justice Voelker, author of the best seller, *Anatomy of a Murder . . .*" Prosser, §97, fn. 6. If this witticism does not exactly have you howling in laughter, remember that it was Prosser himself who wrote an entire book on judicial humor in which he summarized his subject matter in a single sentence: "Judicial humor is a dreadful thing." Prosser, *The Judicial Humorist* (1952).

Mark Granzotto
Mark Granzotto PC
248-546-4649
mg@granzottolaw.com