

Law ass5

Law



**ASSIGN
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Please focus on answer the questions in red at the end. Torts Assignment Try to find the following case on the web: Katko v. Briney, 183 N. W. 2d 657 (Iowa Sup. Ct. 1971).

If you have trouble finding it, you can take a look at it at: <http://www.cooter-ulen.com/cases.htm>

2. Try to find a short synopsis on the web of the “ Coase Theorem” as it relates to law.

If you have trouble finding it, you can take a look at it at: http://www.daviddfriedman.com/Academic/Coase_World.html

3. Take a look at <http://www.maryalice.com/cases/mcdonald.html>

(This site discusses the “ other side” of the recent McDonald’s litigation.)

Having reviewed these materials, consider the following:

You are the general manager of the Vacation Inn. The Inn has an Olympic-size swimming pool on its back lot. The Inn is also two blocks away from a soup kitchen for the homeless. A year ago, unknown individuals soiled the water in the pool, and, thus, your guests’ children playing in the pool became seriously ill. As a result, the Inn installed a ten-foot wire-mesh fence around the pool. Two weeks ago, however, your staff found the body of a homeless man in the pool. An investigation determined that the individual climbed the <https://assignbuster.com/law-ass5/>

fence in an inebriated state and lost consciousness upon entering the water. The decedent's relatives are now suing the Inn. Your district manager asks you to "put an end to such problems," and warns you that another incident like this could "cost you your job." While you are certainly sympathetic to the plight of the homeless, you also want to keep your job. You feel that installing barbed-wire at the top of the fence would be inhumane and would also scare your guests. Instead, you opt to turn to a small company that manufactures electric fences for cattle. The solution they recommend is to run a "hot wire" at the top of the fence. The wire would deliver a mild, normally non-lethal, electric shock to a would be trespasser. A week later you install the wire. Two days later, another inebriated homeless man, who has a pacemaker, climbs the fence. He dies instantly as a result of the mild electric shock. His family sues the Inn.

1. Ignoring any municipal codes and statutes that may exist, based on the information you have reviewed in *Katko v. Briney*, the Coase theorem with respect to negligence, and your own common sense, what are the policy arguments for and against tort liability in this case? The case brings into perspective the eagerness of litigants to sue for damages even when they are on the wrong. The wire mesh erected around the swimming pool differs greatly from the trap in *Katko v. Briney*. This is because while the trap in the former was hidden and caused damage to an unsuspecting trespasser, a wire mesh is clearly visible and when one climbs it, they do so at their own risk. The death occurred due to the man's intoxication and not negligence on the side of the hotel. If the man had not been inebriated he would certainly have survived. As such, his death is as a result of his own cause and should

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not be blamed on anyone else.

The mild shock could not also under normal circumstance have caused death to the homeless man. His inebriated must have largely contributed to his death as a rationally thinking man would have immediately let go of the wire. His death must also be viewed as of his own causing and hence no one else should carry the responsibility.

When arguing about liability, it is important to consider the alternative to fencing the pool. Failure to safeguard the swimming pool grounds from intruders caused serious health problems to children. The hotel has been trying to keep out intruders to safeguard the health of children. The children's health must be taken to supersede the interests of the intruders. It can however be argued that the hotel used deadly force on the intruders by putting up the electric fence. This is because based from previous experience, the hotel ought to have realized that intoxicated intruders may attempt to climb over the electric wire and due to their state hold on to the wire posing risk to their life.

The Coase theorem states that if and when conflicts on property rights appear, a mutually beneficial agreement can be reached where the negotiations are costless. In this case it is impossible to reach such an agreement since the hotel would not in good faith compensate the intruders' families.

2. What do you think the best solution would be and why?

The solution would be to employ live watchmen to man the swimming pool area who can ensure that the homeless people neither spoil the water in the pools nor cause harm to themselves. While this may be expensive it remains the only way that can temporary be safest. With time cameras that detect at <https://assignbuster.com/law-ass5/>

first instant any illegal entrant should be put in place and monitored on 24 hour basis. These should once and for all, solve these homeless people's menace.

Works Cited

Munneke, Gary. How to Succeed in Law School. Barrons Educational Series. New York: Penguin, 2010. Print