MID-TERM EXAMINATION FOR TORTS FALL 2001
Professor Maatman

Instructions:

1) This examination has seven (7) pages, including this one. Count your pages and make sure your exam is complete.

2) The exam consists of two sections.

a) Multiple choice: there are four multiple choice questions, worth 5 points each. You must explain your answers to receive credit. You should allot approximately 15 minutes total to this part of the exam.

b) Essay: there is one essay fact pattern with two questions; your work on these questions will be worth up to 80 points. You should allot approximately one hour to this part of the exam; this time frame includes the time necessary to read the materials and plan your answers.

3) I do not deduct points for "wrong" answers, so everything you write will either gain points or have no effect on your score.

4) Please try to write on every other line, using the right hand page only. When necessary, you can use the left hand page for inserts. I will not deduct points if you forget to do this.

5) Use your system i.d. number, on the front of your Widener University School of Law i.d. card, for your anonymous number. Do not put any other identification on your exam or your answer booklets.

6) If you use more than one booklet, please number them in the sequence in which they should be read.

7) When you have finished your exam, place the exam and your answer booklets in a manila envelope. Sign your honor code sheet, and place it in the envelope designated for the sheets.

MULTIPLE CHOICE (20 Points/15 minutes suggested)

Instructions: Read the following four fact patterns, each of which is on its own page. After each fact pattern, select the best answer provided among the four options, and provide your reasoning for your answer. An answer without reasoning will not get any credit.

- If you are typing your exam, provide your answer by labeling it with the fact pattern number, followed by the letter for the option you have selected, followed by your explanation for your answer.

- If you are writing your exam, circle the option you have selected, and write your reasoning on the four lines provided after the option.

- In either case, your answers should be very brief, but should include a reference to the legal rule(s) that inform your answer.

1) Duncan and Peterson are verbally arguing. Peterson calls Duncan a “super stupid dope who ought to be slapped.” Duncan then punches Peterson on the nose. Peterson sues Duncan for battery, and Duncan sues Peterson for assault.

a) Duncan can successfully argue self-defense and will win his assault claim because

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b) Duncan can successfully argue self-defense but will not win his assault claim because

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c) Duncan cannot successfully argue self-defense and will not win his assault claim because

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d) Duncan cannot successfully argue self-defense but will win his assault claim because

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2) Elwood is insane, and labors under the delusion that a six foot tall rabbit named Harvey is his best friend. He does not understand that Harvey does not exist, and believes that others can "see" Harvey as well as he can. One night, Elwood took his friend Harvey to a bar and ordered drinks for both of them. When the bartender gave Elwood the bill, Elwood said, "it's Harvey's turn to pay tonight." When the bartender told Elwood to leave if he wasn't going to pay, Elwood became indignant, waved his arms around, and threatened to punch him.

a) Elwood does not have the intent necessary to be held liable for assault, and can sue the bartender for false imprisonment because

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b) Elwood does not have the intent necessary to be held liable for assault and cannot sue the bartender for false imprisonment because

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c) Elwood has the intent necessary to be held liable for assault and can sue the bartender for false imprisonment because

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d) Elwood has the intent necessary to be held liable for assault and cannot sue the bartender for false imprisonment because

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3) Oscar was eating a Happyland burger while driving down a public thoroughfare. When he finished his burger, he crumpled up the Happyland bag and threw it out his car window, all the while keeping his eyes on the road. The bag flew out of his line of vision. While still airborne, the bag struck Felix in the eye. Felix was standing on his front lawn at the time, about to yell at Oscar for littering. Unfortunately for Felix, the bag contained an unopened Happyland prize made of heavy plastic. The pain of the blow rendered Felix speechless, so Oscar did not know he had hit someone with his bag until Felix sued him.

a) Oscar is not liable for trespass to property but is liable for battery because

b) Oscar is not liable for trespass to property and is not liable for battery because

c) Oscar is liable for trespass to property but is not liable for battery because

d) Oscar is liable for trespass to property and is liable for battery because

4) Donna is a shopkeeper who has had trouble safeguarding her inventory of "Whiz Kid," a popular hand-held electronic game. Shoplifters constantly steal the expensive item. To foil them, Donna has secretly equipped the games with an electronic tag that will be activated when taken through her store's security gates. When activated, the tag makes a loud noise and emits an electronic shock. Petrie, while attempting to steal one of the games, is shocked. In a bizarre reaction to the shock, he sustains neurological damage. He sues Donna for battery.

a) Donna will not be able to prevail on her defense to property argument but will only be held liable for the shock and not the neurological damage because

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b) Donna will not be able to prevail on her defense to property argument and will be liable for the full extent of Petrie's damages because

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c) Donna will be able to prevail on her defense to property argument because

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d) Donna will be held liable for false imprisonment because

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ESSAY QUESTION (80 Points/60 minutes suggested)

Sam Student is a sixteen year old, slightly heavyset boy enrolled in a summer camp program for overweight teenagers. The camp, located in the State of Widener, attracts overweight teenagers who need help with social skills, confidence, and weight management. As part of its program, the camp requires each camper to learn a new sport. Sam selected tennis to fulfill this requirement.

Cal Coach taught tennis. He and Sam did not get along, as Sam turned out to be hopeless at tennis and Coach had little patience for Sam=s failings. One day, their antagonism came to a head. Sam had performed miserably at every drill, and Coach felt the boy was hardly trying. When the session ended, Coach told Sam to stay on court. Sam protested that he was scheduled to attend an arts and crafts session, but Coach snorted, Ayou won=t be making any lanyards today.@ Coach then told Sam he was setting the automatic ball machine, and that Sam could not leave the court until Sam returned ten shots over the net and in bounds. ABut that=s impossible!@ Sam said. AI=ll be here all day.@ Coach replied, Ayou can leave if you=re willing to admit what a loser you are."

Sam hated being thought of as a loser, so he remained on the court and faced the ball machine. He ran and flailed, but after 30 minutes had only returned two shots over the net. AReady to give up?@ Coach taunted. Sam replied Ano,@ and planted his feet more firmly on the court. Coach strode to the machine and set it to a faster speed. Balls flew at Sam, and he became frightened that they would hit him. Instead of trying to hit shots, he cowered and even ran from the flying balls. Despite his efforts to dodge the balls, some hit him, leaving red marks.

Finally, Sam could take no more. He mustered all his strength, closed his eyes, and whacked his racket at one of the balls, aiming in Coach=s general direction. To his surprise, he connected solidly with the ball. It flew off his racket head, in a fast line drive that landed squarely in the equally surprised face of Coach. Coach sustained a bloody nose and a black eye.

1) **Identify and evaluate Sam Student's intentional tort claims against Cal Coach, including any defenses Coach may assert.**

2) **If Cal Coach sues Sam Student for battery, can he establish the element of intent? Examine <u>only</u> the element of intent, and state and explain your answer. You should assume that common law in the State of Widener holds children and adults to the same intent standard. Thus, the intent Cal Coach must prove is the same degree of intent he would have to prove if Sam Student had been an adult.**