

**Advanced Torts
Final Examination
Spring 2000
Section W (Culhane)**

Instructions

1. This examination consists of two parts, and eight pages (not including this one). Please signal the proctor immediately if you are missing any page(s).
2. Part One contains ten multiple choice questions. For each, choose the **best** answer and enter its letter on the computer answer sheet.
3. Part Two consists of three long essay questions. Each question contains three subparts. You are to answer all three. Please confine your discussion to the questions raised. Will points be given for discussion of extraneous material? No.
4. You have a full three hours to complete the exam. There should be plenty of time to compose your answers carefully, and to review your work before leaving.
5. Assume that the common law applies, unless told otherwise. Where there are two or more views on a particular issue, state and explore the disagreement.
6. Please see "High Fidelity." It is among the better movies currently out.

PART ONE: MULTIPLE CHOICE

The following statutes and facts are to be used in answering questions 1-3.

State of Apoplexy has the following statutes:

In all actions brought to recover damages for negligence resulting in death or injury to person or property, the fact that the plaintiff may have been negligent shall not bar recovery where such negligence was not as great as the causal negligence of the defendant or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

Where two or more negligent actors combine to cause one indivisible injury, they shall be considered joint tortfeasors; provided, however, that any actor whose conduct is determined to be 20% or less responsible for plaintiff's injury shall be severally liable only.

Any joint tortfeasor shall have the right to bring an action in contribution against any other joint tortfeasor for the amount of the excess over the percentage of fault assigned to the first joint tortfeasor, and paid by that joint tortfeasor.

In the event of a settlement with a joint tortfeasor, the nonsettling tortfeasor or tortfeasors are entitled to a credit in the amount paid by the settling tortfeasor.

Applying the statutes set forth above, consider the following facts:

Candy, Dopey, and Eerie are involved in a three-car accident, in which only Candy is injured. Candy brings suit against Dopey and Eerie. It is ultimately determined that Candy is 40% at fault; Dopey is 20% at fault; and Eerie is 40% at fault. Candy's damages are determined to be \$100,000.

1. If Candy attempts to sue Dopey and Eerie, which of the following is true?
 - (a) Candy will lose her claim, because she is at least as negligent as each of the parties against whom recovery is sought;
 - (b) Both defendants will be treated as joint tortfeasors;
 - (c) If Eerie is insolvent, Dopey can be made to pay 60% of Candy's damages;
 - (d) If Dopey is insolvent, Eerie can be made to pay 60% of Candy's damages.

2. If Candy and Dopey settle before trial for \$10,000, how much can Candy recover against Eerie?
- (a) \$90,000;
 - (b) \$50,000;
 - (c) \$40,000;
 - (d) nothing.
3. Assume that Candy sues only Eerie. Which of the following is true?
- (a) Candy will recover \$40,000 against Eerie, who will then have a right to contribution against Dopey for \$20,000;
 - (b) Candy will recover \$60,000 against Eerie, who will then have a right to contribution against Dopey for \$20,000;
 - (c) Candy will recover \$60,000 against Eerie, who will then have no right to contribution against Dopey;
 - (d) Candy will recover \$60,000 against Eerie, who will then have a right to contribution against Dopey for \$30,000.

Questions 4-10 are omitted from this Practice Examination.

PART TWO: ESSAY

This portion of the exam consists of three questions, each of which is to be answered in the blue book(s) with which you have been provided.

1. In late 1999, Ally and Billy, lawyers in the same firm, were engaged to be married. Their wedding date was set for February 29, 2000. In December, 1999, Billy began to experience frequent headaches. At first, these headaches responded to over-the-counter remedies, but, by February, 2000, the headaches became too severe for such treatment. Billy visited his doctor, Nefayrien, on February 15, 2000. Nefayrien, who had been Billy's primary care physician for several years, attributed the headaches to stress, and recommended rest and a lessening of job responsibilities. He also prescribed an extra-strength pain killer. He conducted no tests. Billy and Ally were married, as planned, on February 29, 2000.

By April, 2000, Billy's headaches were almost constant, and quite severe. He therefore paid a second visit to Dr. Nefayrien. An x-ray then revealed a large brain tumor. An operation to remove the tumor succeeded in doing so, but with a disastrous effect: Billy suffered severe brain damage. He is now house-bound and unable to care for himself. The operation itself was not negligent in any way; such brain damage is an unavoidable risk of such massive surgery. Under the circumstances, Billy, who was fully informed of the risks, agreed to the operation.

The tumor was certainly smaller in February 2000, when Billy first consulted with Nefayrien. How much smaller, or whether that difference would have affected the surgery, cannot be known with certainty.

Based on the foregoing facts, please answer the following questions *only*:

- (a) *Please discuss whether Ally can bring a claim for loss of consortium against Dr. Nefayrien. If she can state a claim, what are her prospects for success? What defenses might Nefayrien suggest?*
- (b) *If Ally decides to leave her job and stay at home to care for Billy, may she recover the value of her services in so doing? Discuss.*
- (c) *If Billy's skills as a lawyer were hard to replace, could his employer state a claim for loss of consortium? Discuss.*

2. William Groce was employed by Midwestern Services, Inc. ("MSI"), an oil field service company. Groce, while working for his employer at a wellsite, was helping employees of Hydraulic Well Control, Inc., ("HWC") hoist a pipe when he suffered bodily harm. Groce claims that HWC employees negligently dropped a pipe on his foot.

Groce received workers' compensation benefits from his employer. He then brought a timely third-party claim against HWC, to recover for his work-related injuries to the extent workers' compensation benefits had fallen short of complete compensation. HWC was not only a service contractor on the job, but also his employer's customer.

After the suit was filed, HWC's President, Bob Salas, called MSI's President, Pat Sayjill, and left the following telephone message: "Hey, Pat – Bob Salas here. I just got wind that one of your guys, Bill Groce, has filed suit against us on account of that dropped pipe last month. Doesn't your workers' comp give this fella what he needs? We've been doin' business with y'all for a good long time, and I imagine we'll continue to. I know I can count on you."

Pat Sayjill, MSI's President, then told Groce to drop his lawsuit. Refusing, Groce, an employee at will, was fired.

Based on the foregoing facts, please answer the following questions only:

(a) Please discuss Groce's possible claim against HWC for inducing termination of contract. Be sure to include a discussion of damages for this suit, and compare those to the damages that would be sought in the personal injury suit.

(b) In your opinion, would it make any difference to the outcome of the inducing termination suit if the state in which the accident occurred had a law immunizing third-party defendants such as HWC from negligence at a jobsite, provided that the employee is covered by workers' compensation.

(c) Groce's complaint also alleges that he has been "blackballed" from the oil industry by Sayjill's comments to other employers in the same industry. Assuming this statement is true, could Groce state a claim against Sayjill for interference with prospective advantage? What difficulties would such a suit face?

3. Shortly after Joe Wyoming led the San Angeles 48'ers to their 35th consecutive Ultra Bowl Football Championship, he was in the team locker room celebrating. A reporter for the San Angeles Daily News, one Bea Honey, snapped a photo of Wyoming just after he had removed his towel and was heading into the shower. Honey had a right to be in the locker room, and to take photos. Wyoming was unaware that his photo had been taken in such a "compromised position."

The next day, the picture ran on the back page of the newspaper, where tabloids, including the Daily News, often run their sports headlines. From the picture, one could tell that Wyoming was photographed in the nude. Because of the angle of the shot, however, only the side of his body could be seen.

Given Wyoming's popularity and the intriguing nature of the shot, the Daily News was besieged with requests for a poster. In response, the paper did reproduce the photo and made it available to the general public. Approximately 30% of the posters, or some 30,000, were sold for \$5 each. The remainder were given away, mostly at charity events.

Based on the facts set forth above, please answer the following questions only:

(a) Can Wyoming state a claim against Honey for intrusion upon seclusion? Discuss.

(b) Please discuss Wyoming's possible claim against the San Angeles Daily News for publication of private facts.

(c) Please discuss Wyoming's claim against the Daily News for misappropriation. Be sure to include a discussion of damages in your answer.