

Exam # _____

Professor Turezyn
Professor Munneke

TORTS I EXAM
Fall, 1985

9:30 - 12:30 a.m.

Instructions:

1. This exam consists of 2 parts and 6 pages. Please check the exam to make sure that you have all the pages.
2. This is a three hour examination. There are two one hour essay questions in Part I and five short answer questions of which you must answer no less nor more than four in Part II. Answers must be written legibly in a blue book. You should clearly mark the short answer question you choose not to answer by writing OMIT in the appropriate space in your blue book.
3. Please put your anonymous exam number on the top of this page. All exams and all pages of the exam must be handed in at the end of the time period for taking the exam. YOU ARE RESPONSIBLE FOR YOUR EXAM.
4. Please put your anonymous exam number on the outside of your blue book(s). DO NOT put any other identifying mark on this exam.
5. You will receive credit only for information contained in your blue book(s).
6. You are not permitted to take the exam or any blue book from the exam room.
7. This is a closed book exam. You may bring NO material into the exam room.
8. No talking is permitted once the exam begins. We have instructed the monitor to remove the exam and blue book if anyone is talking.
9. You should not have to infer any facts. But, if you feel that a question is missing any fact, state what that fact is and how it would affect your answer.
10. Have a Happy Holiday! We will see you in January.

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PART I
Essay Questions

Question 1 (1 hour)

In the jurisdiction in which the following incident takes place there is a statute which makes it a crime to engage in a fist fight.

Sam owns the "Jeers" bar. Sam noticed that a number of glasses with the words "Jeers" printed on them have been removed from the premises. He instructed his waitresses - Diane and Carla - to stop and strip search suspicious patrons before they leave the bar. One night Diane, a 5 ft. 90 lb. blonde, noticed that a customer (Norm) was about to leave the bar and that he had a bulge under his jacket. She ran over to the door and said, "You cannot leave this bar until you admit that you are stealing our glasses." When Norm continued to walk to the door, Diane said, "If you take one more step, I will hit you." Norm, however, boldly continued to walk to the door. Diane then called out: "Everyone will think you are a thief if you don't agree to answer some questions in the office." Norm, who valued his reputation, was quite upset by this idea, so he agreed to accompany Diane to the office. Norm's best friend Cliff heard Diane threaten to hit Norm. He rushed over and pushed Diane aside as she was leading Norm to the office, causing her to hit her head on the floor.

Sam heard the commotion and came over to see what was going on. As he approached, Cliff pulled out a green water pistol and threatened to shoot anyone who came near him or Norm. Sam formed a fist so that he could knock the gun away from Cliff. Cliff, however, saw the fist coming and ducked. Unfortunately, Diane was standing behind Cliff and she received Sam's fist in her face. Sam apologized to Diane saying, "You know I did not intend to harm you. It is customers who try to steal my glasses that I would like to hurt." This remark provoked Norm's anger like a thunderbolt. He rushed at Sam and pulled on Sam's sweater. Sam pulled out a knife and said, "Take your hands off me or I will stab you." Norm complied but Sam punched him anyway. Norm punched Sam and Sam punched Norm. Just as Norm was about to deliver another blow, Sam threw a glass of water in Norm's face which calmed everyone down.

Diane told Sam that she suspected Norm of stealing glasses. Sam pulled off Norm's jacket but discovered that the bulge was Norm's stomach. Just then Carla, the other waitress, called out "Fire." Flames were indeed leaping up from an overturned candle. Sam started to run over to the scene with Norm's jacket but Norm grabbed it and refused to let Sam have it. Sam then yanked it out of Norm's hands and used it to put out the fire. Unfortunately, the fire burnt a hole in the coat.

Sam led Norm back to the office and told him that he would not be allowed back in the bar although he could leave by a side exit. Carla walked by a few minutes later and heard noises from the office. Believing that the noises were made by Diane, Carla hollered into the room: "I am going out tonight to buy a hatchet. Tomorrow I am going to find you and chop off all of your toes." Norm left by the side exit but for the next 2 weeks he had nightmares about a deranged woman chopping off his toes.

Meanwhile, Cliff realized that he must get home. Norm was nowhere to be found but Norm's car keys were on the bar. Cliff took the keys and drove the car, intending to return it the next morning. Unfortunately, he hit a tree and demolished the car. However, he returned the keys to Norm first thing next morning.

Fully discuss any and all actions the parties have against each other. Make sure you consider any defenses which could be raised.

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Construction was progressing on the new wing of the Camelot Law School. Although the project was far from complete, the faculty wing had been occupied prior to the beginning of the fall, 1985 semester. A hallway connected the faculty offices with the rest of the law school; rooms along the hallway were still under construction.

The general contractor Marvin Mercenary had requested that his site supervisor Joe D. Furious protect the property by placing warnings in the hall to keep out everybody but faculty members, and to warn faculty using the hallway of potential dangers on the construction site. Furious put up two signs: one said "No students;" the other, "Be careful."

Furious also told his workers, Larry Comical, Klaus vonKurtson and Marjorie Schoolgirl to keep the hallway clear and to avoid using sloppy methods in their work. Despite these admonitions, Comical left an open bucket of white paint in the hallway near the top of the stairs leading to the faculty offices. Schoolgirl and vonKurtson were carrying several sheets of plywood down the hall when vonKurtson stepped into the open paint bucket causing him to lose his balance and drop his end of the load. Schoolgirl, being small of stature, could not hold on to her end of the plywood sheets, and she tumbled down the stairs.

At the very moment this happened, M. B. McManymen, Dave Fish and Phyllis Bookends, faculty members at the law school, were returning to their offices from a faculty meeting in the law school. As they ascended the stairs, Schoolgirl and the plywood were descending at a great rate of speed due to the law of gravity. The faculty members did not notice the oncoming objects because they were involved in an intense discussion about the gravity of law.

At any rate, Schoolgirl's fall was broken when she fortunately landed on McManymen; McManymen's leg was broken when she unfortunately fell back down the stairwell. More unfortunately, the injury did not heal, and two years later cancer developed at the point of the break and her leg had to be amputated.

Meanwhile, the plywood struck Bookends, causing her to lose her balance. She instinctively reached out to grab something to maintain her footing. What she grabbed was an electrical cord hanging from the ceiling. Although there was no obvious exposed wire, Bookends was shocked as she held the cord. Fish, attempting to be civil, reached out to help her up, causing the

current to proceed through his body as well. Bookends survived the incident, but she was in the second month of pregnancy and the child she was carrying did not. Nor did Fish whose pre-existing heart condition was aggravated by the electric shock. The next day he collapsed and died of a heart attack.

The bucket of paint rolled down the stairs coming to rest on the Torts notes of first year law student Gilbert Outline who was studying at the foot of the stairs some fifty feet from the place Comical had left the bucket initially. Outline's notes were ruined; he failed the Torts exam and was dismissed from school for academic deficiency.

In addition, there was a statute in the State of Camelot which provided that, "any building contractor who leaves an open container of paint in any enclosed area on a construction site shall be guilty of a misdemeanor." The legislative history indicated that fumes from open paint cans in enclosed areas had resulted in several explosions in recent years in the State of Camelot.

What tort liability issues are presented by this fact situation? Who is liable to whom? What damages are recoverable if the injured parties prevail? What theories of law are most likely to be used by potential plaintiffs in subsequent law suits? What defenses may be presented by potential defendants?

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Short Answer Questions (one hour)

There are five (5) short fact patterns in this section. You must answer four (4) of them. This means you have fifteen (15) minutes per question. Specificity and conciseness are critical. Write your answers in the blue book provided.

1. Ten year old Bobby Scott was driving his daddy's snowmobile over the river and through the woods to pick up grandmother and bring her back for Thanksgiving dinner. He gets to grandmothers, and picks her up, but when he arrives home grandmother is nowhere to be found. The next day grandmother is found frozen in a snowbank. Discuss Bobby's potential tort liability.
2. Sam Student decided to fly his kite while at the beach one day. He did this despite knowledge of a local ordinance which prohibited kite flying on the beach and punished offenders with a \$25.00 fine. Sam was not holding onto the kite string very tightly and when an unexpected strong gust of wind materialized, it blew the kite out of Sam's hands. The wind carried the kite about 5 miles until it crashed into the windshield of Pete Plumber's truck, which Pete was driving at a speed 10 miles above the legal limit. The kite shattered the glass and forced Pete to cancel all of his afternoon appointments. Discuss Student's liability to Pete.
3. Charles witnessed Diana run over Margaret with a car. Diana's operation of the vehicle appeared to be negligent. Charles ran to help Margaret. While assisting Margaret, Charles was struck by a car negligently driven by Andrew. In the confusion of the accident, a package Charles had set down when he went to the aid of Margaret was lost. May Charles recover from Diana for his injuries? For the loss of his package? From Andrew for either? If Charles recovers a judgement of \$10,000 from Diana, and the jury determines that Diana and Andrew were equally responsible for Charles' loss, how much, if anything, may Diana recover from Andrew? If Andrew, at the accident scene, wrote Charles a check for \$1000.00, and Charles signed a note saying, "I, Charles, release Andrew for any future liability for my injuries. I do not release Diana /s/Charles," will Charles still be able to recover from Diana? Is Diana relieved of liability if an insurance policy owned by Charles pays Charles \$10,000.00 for his injuries? What if Charles and Diana are married? What if Charles and Andrew are brothers? What ever happened to Margaret? Explain your answers.

4. Mrs. Hapless and daughter Harriet were getting into their car when Roger Reckless drove his auto down the street at a high speed. Reckless avoided hitting Mrs. Hapless only because he turned sharply to the left and into a tree. Mrs. Hapless had her back to Reckless's automobile so she did not realize that he missed striking her by inches. However, she did see him crash into the roadside rotted tree owned by Gary Grumpy. The impact caused the tree to fall in the direction of Harriet. Mr. Hapless, who was still back at the house heard Mrs. Hapless call out: "Harriet, the tree is going to hit you." Then he heard the sound of the tree contacting the ground, Mr. Hapless suffered a heart attack as a result. Mrs. Hapless fainted. Harriet Hapless escaped all physical injury, because she quickly ran out of the tree's path. However, she began biting her nails after this incident. Discuss the liability of the various parties to each other.

5. Roger Reckless immediately returned to the scene (see question 4) to give aid. Roger had a certificate stating that he was qualified to administer CPR. The certificate had expired but Roger began to administer to Mr. Hapless anyway despite a state law which prohibited anyone from administering CPR without a valid certificate. Roger, who had been drinking beer all morning, at first began to administer artificial resuscitation into Mr. Hapless's ear, but soon realized his error and corrected his conduct. Unfortunately, Mr. Hapless died. Bob Bumbling, a doctor, was walking down the street when he saw Mrs. Hapless unconscious on the sidewalk. He ran up to the home of Gary Grumpy and knocked on the door. When Mr. Grumpy answered, Bumbling asked Grumpy to please call an ambulance. Grumpy promised to do so, but as soon as he shut the door, he returned to the football game he was watching. Another neighbor did call an ambulance. Bumbling continued his walk. Discuss the liability of the various parties to each other.

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