# TORTS MIDTERM

Fall 2004 Professor Maatman

- 1. There are nine (9) pages to this exam, including this cover sheet. Each page is numbered in the upper right hand corner. Count your pages. Let me or your proctor know immediately if you are missing any pages.
- 2. There is a multiple choice section with ten (10) questions, and one essay fact pattern with three (3) sub-questions. See the outset of each section for point breakdowns, suggested time, and any special instructions. You may answer questions in any sequence you like, provided you clearly label your answers.
- 3. For the multiple choice questions, use a #2 pencil to fill in your choice on the scantron sheet. If you need to explain any answers, do so in your exam booklet or in your examsoft manuscript.
- 4. If you are writing your essay in an exam booklet, try to remember to use every other line and only the right hand page. Use the resulting blank spaces if you need to add an insert to your answer.
- 5. The exam is anonymous. Use only the last four digits of your social security number to label your materials.
- 6. FOR ALL BATTERY QUESTIONS ON ANY SECTION OF THIS EXAM, ASSUME YOU ARE IN A "DUAL INTENT" JURISDICTION.

TAKE A BREATH. DO YOUR BEST.
REMEMBER WHAT YOU KNOW, AND
REMEMBER TO DEMONSTRATE WHAT
YOU KNOW.

# MULTIPLE CHOICE QUESTIONS

- □ Ten (10) questions.
- □ Four (4) points per question.
- Select the <u>best</u> answer.
- You may explain your answer if you feel the question is ambiguous.
- Suggested time: No more than 20 minutes for this section (you should need less).

# For question 1:

Pam was visiting a friend who lived in another town. As the sun began to set, Pam went to her car to drive home. She noticed a growing puddle of gas on the ground underneath and nearby the car, and a strong odor of gas. Having some experience in automotives, she realized that her car's gas tank had cracked. She called a tow truck to pick up the car and take it to a repair shop. It was dark when a tow truck operator named Dillon arrived. Dillon asked Pam where the gas tank had cracked, and she replied that she didn't know because her view of it was blocked by a metal cover. Dillon then lit a cigarette and proceeded to crouch down to inspect her car's undercarriage. Expecting an enormous explosion at any minute, Pam ran from the site. Her flight stopped when she tripped and fell, breaking her ankle. In pain and with her heart pounding, she sat up and turned around, only to see Dillon calmly emerge from under the car to ask her where she wanted it towed.

- 1. If Pam sues Dillon for assault and for battery,
  - a. She will lose her assault claim because she cannot establish that Dillon intended to put her in apprehension of a harmful or offensive contact, but she will win her battery claim because his conduct led to her broken ankle.
  - b. She will lose her assault claim because helping a motorist is not an overt act that would put someone in apprehension of a harmful or offensive contact, but she will win her battery claim because his conduct led to her broken ankle.
  - c. She will lose her battery claim because Dillon did not intend to cause a harmful or offensive contact, and she will lose her assault claim because no explosion could have been imminent given that there never was an explosion.
  - d. She will win both claims.

# For questions 2-3:

United States Senator Todd Kincaid was flying on NorthSouth Airlines from Washington, D.C., to his far-away home state of Widener to speak that evening at an important event for his hotly contested reelection campaign. When he got to the ticket counter at Dulles National Airport in Washington, D.C, the agent told him he could not board the plane because his name was on the "no-fly" list of suspected terrorists barred from air travel. "But I'm not a terrorist; I'm a United States Senator," Kincaid truthfully protested. "I've served since 1964—that's forty years! I need to get on this plane for an important campaign event in a close election!" Unmoved, the boarding agent told Senator Kincaid he could wait until the airport's Transportation Security Administration head arrived, when he could take up the matter with her. Kincaid waited thirty minutes for the TSA head. While he waited, another passenger called news reporters to "tip them off" that Senator Kincaid was a terrorist. Horrified at what his election opponent might make of this, Kincaid begged the agent in an anguished whisper to immediately get the TSA head to the counter. The clerk ignored him. After another thirty minutes, the TSA head arrived, determined that the agent had confused Senator Kincaid with a no-fly listing for a person named "Tad Kincaid," and arranged for the Senator to take the next plane to his destination.

- 2. If Senator Kincaid sues NorthSouth Airlines for false imprisonment,
  - a. He will win because he had no choice but to wait an hour under humiliating circumstances so that he could get to a crucial campaign event.
  - b. He will lose because he stayed to clear his name and could have gone back home to his apartment in Washington, D.C.
  - c. He will lose because he eventually was allowed to board a plane.
  - d. He will lose because Dulles Airport is too large for him to have been confined within fixed boundaries.
- 3. If NorthSouth airlines asserts the affirmative defense of arrest and detention (also known as "the shopkeeper's privilege"),
  - a. It will win because national security is even more important than prevention of shoplifting.
  - b. It will win because the means used to detain him were reasonable given that there was no force or manhandling.
  - c. It will lose because it did not have probable cause to detain him.
  - d. It will lose because it was not a shopkeeper trying to recapture stolen property.

## For questions 4-5:

A bank robber entered a bank. When he got to the head of the line, he pulled a gun out from underneath his coat, and handed the teller a note demanding all the money in her drawer. The teller obediently stuffed a bag with bills and coins. The robber put his gun down on the counter to reach with both hands for the heavy bag. Quickly, the teller grabbed the gun and pointed it at the robber. Flustered, the robber raised his forefinger and thumb, mimicking the shape of a gun. The teller laughed, took aim, and shot the robber in the foot.

- 4. If the robber sues the teller for battery,
  - a. He will win because the teller's laugh humiliated him.
  - b. He will win because the teller intended to, and did, shoot him in the foot.
  - c. He will lose because he was in the process of committing a crime when the teller shot him and courts always bar claims for injuries incurred in criminal activity.
  - d. He will lose because the teller did not directly contact him.
- 5. If the teller asserts self-defense as a justification for the shooting,
  - a. She will lose because the robber was "armed" only with his finger when she shot him.
  - b. She will win because the robber had threatened her with the gun.
  - c. She will win because she was defending the bank's property.
  - d. She will win because she used minimal force by shooting the robber in the foot.

## For questions 6-7:

Fenger High School's Pep Club decided to raise funds by selling strips of duct tape to students wanting to tape their popular principal to the wall of the school's cafeteria. The principal agreed to participate because he'd heard that similar stunts at other schools had raised a lot of money. At lunch hour on the day of the event, the principal placed a stepladder next to the cafeteria wall, climbed it, and took up the position in which he would be taped. Students flocked to buy and use tape strips; so much money rolled in that that the Pep Club officers wanted to continue the event past the lunch hour. When they asked the principal if they could continue, he looked at them with glassy eyes and giggled. The Pep Club President responded, "Great! I knew you would want to raise more money!" As the taping continued, the principal, who actually was delirious from overheating caused by the thick layers of duct tape covering his body, began drifting in and out of consciousness. When the principal began repeatedly mumbling "detentions, detentions, demerits and detentions," the students realized something was wrong. It took them 15 minutes to pull off the tape to get the principal down from the wall. The principal required an overnight hospitalization for heat exhaustion and dehydration.

- 6. If the principal sues the students for false imprisonment,
  - a. He will win because the students took advantage of his good nature, which is a form of duress.
  - b. He will win because he was harmed by confinement of at least 15 minutes' duration.
  - c. He will lose because he picked the place where the students would tape him, so the students did not fix the boundaries of his confinement.
  - d. He will lose because he was unaware of any confinement.
- 7. If the students argue that the principal consented to the confinement,
  - a. They will win because the principal agreed to participate in the event.
  - b. They will win because the principal told them to continue taping him past the lunch hour.
  - c. They will lose because they did not have the principal's consent to become overheated and dehydrated.
  - d. They will lose because there was no valid consent to tape past the lunch hour.



DO NOT TRY THIS AT HOME!

## For questions 8-10:

Sam Scout and Austin Stevens were 12 year old Boy Scouts who loved camping. Dan Farmer was a widower who lived alone on a five acre farm and ran a local restaurant called "Dan's Diner." One early October day, Sam and Austin stopped at Dan's Diner after a Boy Scout meeting. Dan, a former Scout, saw them in uniform and talked with them about camping. When the boys asked if they could camp on his land, Dan told them: "Sure, whenever you want. Just call me at home when you do it so that I'll know if you and any of your friends are there. And keep the group small." Sam and Austin decided to camp on Dan's land the very next day. They gathered their gear and left a message on Dan's home answering machine to tell him they would be on his land that night. Then—with Austin's dog trotting beside them--they hiked to Dan's farm, passing by Dan's house before setting up camp at the end of the farm furthest from the house. At approximately 11:00 p.m., heat, thirst, and mosquitoes awakened the boys. They decided to cool off and slake their thirst with water from an outdoor pump they had seen near Dan's house. Halfway to the house, their flashlight went out. As they tried to jiggle the batteries to life, the dog ran ahead of them to the house. In the meantime, Dan pulled up the drive after a long day working at the restaurant and saw a dog rummaging in his garbage cans. Annoyed because he'd recently been having problems with dogs, Dan went into his house, got his gun, and came back out without even glancing at his answering machine. While Dan was in the house getting his gun, the boys gave up on the flashlight and walked in semi-darkness towards the house. Just as they got near the pump and garbage cans, Dan (who did not see the boys) aimed for the dog and fired off two shots. One bullet hit Austin's dog; the other hit Austin, himself. Austin and his dog survived, but both sustained permanent injuries.

- 8. If Dan sues Sam and Austin for trespass to land, and Sam and Austin assert the defense of consent.
  - a. Dan will lose because the boys reasonably believed they had permission to camp and bring the dog with them if they left Dan a message to let him know they were there
  - b. Dan will lose because he actually consented to the boys' entry upon his land and a dog cannot commit an intentional tort.
  - c. Dan will win because the boys and Austin's dog entered his land without his actual consent to do so.
  - d. Dan will win because the boys and Austin's dog entered his land without his apparent consent to do so.

- 9. If Austin sues Dan for battery,
  - a. He will win because Dan should have known the boys might be there when he fired the gun and therefore risked inflicting a harmful contact on one or both boys when he shot the gun in the dark.
  - b. He will win because Dan shot and wounded his dog.
  - c. He will lose because Dan did not know he was there and therefore could not have intended to inflict a harmful contact on one or both boys.
  - d. He will lose because Dan was defending his property from the dog.
- 10. If Austin sues Dan for conversion and trespass to chattels for shooting and permanently injuring his dog,
  - a. He will win both claims because the dog is his property.
  - b. He will win his claim for conversion because wounding a dog is an exercise of substantial dominion over it, but he will lose his claim for trespass to chattels because the dog survived.
  - c. He will lose his claim for conversion because the dog survived, but he will win his claim for trespass to chattels because the dog was injured.
  - d. He will lose both claims because Dan did not know the dog was his.

## **ESSAY QUESTIONS**

- □ Sixty (60) points.
- □ Suggested time: No more than 40 minutes for this section.

To assist your organization, I have broken down what would have been one broad call of the question into three sub-questions. If any torts, elements, or issues are common to two or more plaintiffs, feel free to explain the applicable law and/or fact analysis only once—but tell me clearly that you are doing so. The questions (repeated at the end of the fact pattern) are:

- 1) Analyze whether BEA PEST can sue Dave and Deena for any intentional torts, including the damages she can seek from them. Do NOT consider any affirmative defenses that Dave and Deena might assert to any of Mrs. Pest's claims.
- 2) Analyze whether PHIL FIDO can sue Dave and Deena for any intentional torts. DO consider any affirmative defenses Dave and Deena might assert to Mr. Fido's claims.
- 3) Analyze whether ALICE ALLERGIC can sue Dave and Deena for any intentional torts. Do NOT consider any affirmative defenses that Dave and Deena might assert to any of Ms. Allergic's claims.

Dave and Deena, two bored 17 year olds, were whiling away a summer's afternoon looking for something to do. As they walked through their neighborhood, they halted at Bea Pest's house.

"I know what we can do," said Deena. "Let's see what happens if we throw a rock at the bee hive that's been on Mrs. Pest's house for the last couple of years. Mrs. Pest is at work and will never know about it."

"Man, I don't know," said Dave. "I studied about bees in biology class, and I don't like them. Some can be really mean. What if we get stung?"

"Chicken!" said Deena. "I think it'd be cool to see what happens. I can't believe she hasn't taken that thing down. It's been on the wall for ages. We'll just throw the rocks, run like heck, and turn around and watch. What do think—are there maybe 100 bees in there?"

"More than that, I bet," said Dave. "I'd say maybe 300. It would be pretty cool to see how many come out. Let's do it!"

Alice Allergic, who was allergic to bee stings and could die if stung, nervously watched Dave and Deena as they threw rocks at the hive. On their third try, the teens simultaneously scored direct hits on the hive; instantly, bees streamed out of the hive. As they'd planned, the two ran as fast as they could to find a place of safety where they could observe what happened next. As they had not planned, thousands of bees kept pouring out of the hive and began attacking everything in sight. As the bees swarmed out, Ms. Allergic began to scream unceasingly, while crouching and covering her head with a jacket. Fortunately, she had unwittingly chosen one of the best strategies (minus the screams) recommended for avoiding stings from swarming bees.

Phil Fido's dog, tied up outside, could not escape the angry bees. The dog howled in pain as they repeatedly stung him. Alerted by the dog's howls, Phil looked out the window, saw the enormous swarm, and called the fire department. Worried for his dog, Phil ran outside to rescue it. Bees repeatedly stung him as he untied the dog and ran from the bees with his dog in his arms. Once safely out of the bees' range, he tended as best he could to the whimpering dog.

When the firefighters arrived, they cordoned off a four-block area to prevent people from coming within the bees' range. Like others within the cordoned area, Ms. Allergic frantically sprinted towards the parked fire trucks. Once past the cordon, she huddled in a fire truck and watched the mass of bees swarming where she had just been. Although she had not been stung, she sobbed with fear.

In the meantime, the firefighters called an expert beekeeper. As they waited for the beekeeper, they maintained the cordon and tried to control the bees using streams of water from fire hoses. This effort kept the bees at bay, clustered largely around Bea Pest's and Phil Fido's houses. When the beekeeper arrived, he used a chemical spray and a vacuum to subdue, kill, and remove the bees. It took him an hour to complete this task. Once he was done, the firefighters removed the cordon and Phil was able to return home, get a car, and take his dog to the vet. The vet determined that the dog had been stung so many times it would not survive. The dog died later that night.

Subsequent investigation of Bea Pest's home revealed that the bees had established three colonies in the walls of her house. The colonies were so large that the walls had to be torn out to remove more bees and approximately 500 pounds of honey. These measures substantially damaged Mrs. Pest's house.

The beekeeper determined that he had killed approximately 120,000 "killer" bees, a South American strain that has been spreading throughout the United States. These bees are much more aggressive than honey bees: they will attack in response to the slightest of provocations, will pursue their victims over wide ranges, and will sting repeatedly. They are considered very dangerous, but only an expert like the beekeeper can distinguish killer bees from honey bees.

- 1) Analyze whether BEA PEST can sue Dave and Deena for any intentional torts, including the damages she can seek from them. Do NOT consider any affirmative defenses that Dave and Deena might assert to any of Mrs. Pest's claims.
- 2) Analyze whether PHIL FIDO can sue Dave and Deena for any intentional torts. DO consider any affirmative defenses Dave and Deena might assert to Mr. Fido's claims.
- 3) Analyze whether ALICE ALLERGIC can sue Dave and Deena for any intentional torts. Do NOT consider any affirmative defenses that Dave and Deena might assert to any of Ms. Allergic's claims.

By the way, something like this really did happen in California this year!

# Answer key for multiple choice questions:

#### 1. D

She wins the assault claim because working in close proximity to leaking gasoline with a lit cigarette meets the substantial certainty test that someone nearby will fear an explosion and concomitant harmful contact from fire, exploding car parts, etc. The fact that there was no explosion was a fluke; to any bystander, an explosion would have appeared imminent. Its nonoccurrence is irrelevant to having an assault claim, because assault does not require actual contact—just apprehension of an imminent harmful contact. She wins the battery claim for the injured ankle on the basis of transferred intent.

#### 2. A

He has no other way to get to the campaign event—the fact pattern tells you his destination is far away, and that the event is that evening. The fact pattern also tells you the event is critical. Moreover, Senator Kincaid told the ticket agent the campaign event is critical. The humiliation of being made to wait, and of the "terrorist label" and the pending arrival of reporters, is analogous to the humiliation we saw in McCann. Kincaid had to wait an hour; this is a substantial amount of time according to all of the cases we studied. Being allowed to board eventually does not mean he has no cause of action—the McCanns got to leave after awhile, too. Finally, an airport is large, but the tort's fixed boundaries requirement is quite flexible, and Kincaid really was confined to staying near the gate where the TSA head was to find him. Hence, Kincaid's interests are of the kind the tort is meant to protect.

#### 3. C

The first option is a "red herring"; national security is, indeed, important, but that doesn't mean it automatically allows confinement of another within fixed boundaries with no basis to do so. Absence of manhandling and force is not in itself sufficient to make the means of detention reasonable. The privilege certainly could be invoked outside the common shopkeeper/shoplifter context; moreover, an airline is a kind of "shopkeeper"—it sells passage on an airplane. Successful invocation of the privilege ultimately depends upon probable cause. Mistaking Todd for Tad, especially when the person in question is a well known public figure who by no stretch of the imagination could be a terrorist, cannot comprise probable cause.

#### 4. B

Battery requires a contact, so a laugh alone or even humiliation as a consequence of laughter is not the basis for a battery cause of action. Committing a crime does not automatically bar a battery claim (as we saw in Katko). Indirect contact, e.g. by throwing a rock or shooting a gun, suffices to meet the contact element. The teller acted with the intent to cause a harmful contact, and caused a harmful contact.

#### 5. A

Self defense has to be proportional to the threat. Shooting an unarmed person—especially in the absence of facts about size differentials and with a fact pattern that describes the robber as "flustered"--is disproportionate to the threat that person poses. This is so regardless of where one aims. Although the robber threatened the teller with the gun, he could not make good on the threat without the gun, and, indeed, posed little or no threat to the teller when she shot him. Defense of property does not justify a battery, as we know from Katko.

#### 6. B & 7. D

The key to these two questions is realizing that the false imprisonment/confinement began at the point of continued taping past the lunch hour. Up to that point, there was consent. After that point, there was none. The principal was delirious, and a glassy-eyed giggle cannot be construed as actual or implied consent. The Pep Club President attempted to provide substituted consent but had no authority to do so. For the next 15 minutes of continued taping, the principal suffered harm by reason of his confinement.

I will also accept C as a correct answer for question #6, because it is plausible to think that, even at the point of taping past the lunch hour, the principal himself had already fixed the boundaries and that defendants never did so.

#### 8. A

The clue here is that the language of response A quite closely tracks the definition of apparent consent, which is what Dan gave the boys. B is the next best choice, but Dan didn't give actual consent for the dog's entry, and causing an object/animal to enter upon land constitutes a Trespass to Property. (The dog itself wasn't committing the tort, but the boys who brought him conceivably were . . . but for the reasonableness of thinking that the scope of Dan's consent could include the dog.)

#### 9. B

A cannot be correct because it speaks in terms of <u>risk</u>—that's not enough for an intentional tort. Moreover, Dan was acting with a purpose: his purpose was to shoot a dog. That's at a minimum intent to commit a trespass to chattel by wounding the animal, if not an intent to commit a conversion by killing the animal. It follows that B is the correct answer as a result of transferred intent, and, for the same reason, C cannot be the correct answer.

### 10. C

This question tests your understanding of the difference between conversion and trespass to chattels, and closely tracks the joyride with the dog hypotheticals we covered in class. (Remember? In class you all easily knew that merely kicking/hurting the dog was a trespass to chattel, while killing it would be a conversion.)

# Sample of high-scoring essay answer, Fall 2004

Does bea pest have a trespass to land claim against d and d. yes, trespass to land is intentional entry upon land of another.

Intentional entry is person entering land or cause object to enter land. intent is defined as acting for purpose of or acting with substantial certainty that act will acure through knowledge capacity and education. This element can easily be met. The boy intended to cause object to enter land of Bea Pest.

The larger question is what damages are they liable for. The tort trespass to land allows payment for all damages on land intentional or not. With extended liability the boy can also be liable for any damages that arise from event. extended liability is the person is liable for the intentional tort damages and any damages that result even if not intended or expected.

The court could find that the boys could be found for trespass to land. The boys can also be held to pay for damages that accursed from the house being torn apart. So the house owner can have claim for trespass to land and will likely win. The boys can likely be held liable for all damages to house.

Phil can have a number of claims against the boys. The first claim he could have is conversion. conversions the def intentionally showing substantial dominion over another's chattel. Intentional was defined in above section. substantial dominain is the showing of control over another's property. The property in this case being the dog. The elements of substantial dominain are met since the dog did die from the act the boys throwing the rocks. The issue is whether they intended to cause this harm and substantial dominion over dog owners property. Transferred intent is that intent to any intentional tort is transferable to any other tort and to any person.

Transferred intent theory show above the boys did have intent to show substantial Dominion over chattel. They are the cause to the dogs

death. The court may find this difficult since the boy did not have intent to show sub. dom. over dog. or even know the dog was there.

More facts are needed.

Another issue that would effect this issue is trespass to land. The t to land is defined above. The issue is did the boys cause the bees to enter land of another. This maybe hard for phil to bring but if the intent to through rock with substantial certainty that bees would be angry and swarm then phil may be able to bring a t to land claim against the boys. The boys causes object to enter others land and with Transferred intent they maybe held liable.

Phil's next claim is whether the boys can be held for Battery. Battery is the intent to commit a harmful or offensive act and harmful or offensive act acures. Intent was defined above, the next element is harmful or offensive contact accures. Offensiveness is defined and offending reasonable sense of a persons dignity. The third element is contact that is harmful or offensive. The element that are not in question are the harmful or offensive contact accursed. The issue is whether there contact was interned and whether it was intended to be H. or O. If the use of the Tran. intent theory defined above the intent elements can be implied. So Phil has a strong case with the bees stinging him for the contact and the dual intent falling under the tran. intent theory for a battery claim.

phil next claim against the boy would be assault. Assault is defined as the def. put the plaintiff in next ous apprehension by the reasonable belief of an imminent bodily touching that is harmful or offensive. The first element is intent by defendant. The act then has to be imminent. Imminent is without significant delay but not ammidate. The plaintiff has to fear a battery unrest the plaintiff's peace of mind. The last element is there has to be an overt act to show imminence. The element that are the easiest to find are the immanent harm and the overt act. The harm was the bees outside and the overt act is the dog being stung. The bees but the plaintiff in fear of harmful touching. The court would find the claims of assault and

battery easily in this case for phil.

The boy may have a defence. Phil did not have to go outside to get dog and by going outside knowing of the bees he consented to getting stung by them. They many say a reasonable person would not have entered to save the dog. A reasonable person is the normal ideas

the plaintiff A. If a bee did sting her she would have a claim for battery, with tran, intent, and the harmful act of getting stung. The other issue is whether the act was offensive to A. Offence was defined above as offending reasonable sense of persons dignity. If a bee landed on her and did not sting she may still have battery claim. This would be hard to prove. The court would likely find in favor of an assault over a battery but it is likely if there was contact there is a battery also. So there is a strong claim for an Assault and without other fact a weak claim for battery.

no - nover facts
Stra fareing.

# SAMPLE ASSAULT ESSAY

Does Alice Allergic have a claim for assault against D&D for being put in apprehension of stings from angry bees?

Assault happens when D. intentionally causes apprehension to P. of imminent H/O contact.

Intent requires acting for the purpose or with substantial certainty. While D&D didn't know Alice was allergic to bee stings, they should have known that bee stings can indeed be very harmful to anyone. However, they can argue that they didn't necessarily intend to cause apprehension to Alice, since they didn't know she was there.

Apprehension refers to creating anticipation, expectation of H/O contact. This element is clearly met since Alice saw the bees coming at her.

Imminence means that there's no big delay before H/O contact occurs. This element is again met since the bees attacked her immediately.

H/O contact refers to touching that is harmful or offensive. Bee stings can be very harmful to a person's body. Also the touching can be indirect. D&D caused the bees to come out, and caused their contact. Even though she protected herself from the stings, she was definitely put in apprehension of H/O contact. Thus Alice could have an assault claim against D&D.

## SAMPLE BATTERY ESSAY

PF v. DD may have battery and trespass claims against DD.

Battery - when defendant intentionally, directly or indirectly, causes a harmful or offensive contact upon plaintiff. Majority jurisdictions require dual intent where defendant intends contact and intends contact be (H or O).

Here intent may be met by transferred intent through DD's trespass to PF land. If so, transferred intent satisfies dual intent requirement. If not, DD could successfully argue no intent for battery because their purpose was for knocking bees down, not having bees bite PF or dog.

However, PF could argue subst certainly - where DD knew bees would bite others, but the problem-of dual intent remains - but arguably DD acted with D's Biology class knowledge - that bees may attack and be dangerous.

Offensive contact occurs when a P's reasonable sense of personal dignity has been affronted. Here PF suffered actual physical harm by bee stings, indirect contact, and O contact wouldn't be necessary. Contact doesn't have to be directly from DD & thus the bee stings could act as proxies to fulfill this element.