

WIDENER UNIVERSITY SCHOOL OF LAW

TORTS

MIDTERM EXAM

Professor Pope

Fall 2010

GENERAL INSTRUCTIONS:

1. **Read Instructions:** You may read these instructions (the first three pages of this exam packet) *before* the official time begins.
2. **Honor Code:** While you are taking this exam, you may not discuss it with anyone.
3. **Competence:** Accepting this examination is a certification that you are capable of completing the examination. Once you have accepted the examination, you will be held responsible for completing the examination.
4. **Exam Packet:** This exam consists of **nine (9) pages**, including this cover page. Please make sure that your exam is complete.
5. **Identification:** Write your exam number in four places: (1) Write it in the space provided in the upper-right hand corner of this page. (2) Write your exam number on the cover of each Bluebook (or your ExamSoft file) that you use for Part Two. (3) Write your exam number (*and* fill in the corresponding ovals) on the Scantron form. (4) Write your exam number on the upper right hand corner of your envelope.
6. **Anonymity:** The exams are graded anonymously. Do *not* put your name or anything else that may identify you (except for your student number) on the exam.
7. **Timing:** This exam must be completed within eighty (80) minutes.
8. **Scoring:** There are 80 points on the exam, approximately one point per minute.
9. **Open Book:** This is an OPEN book exam. You may use *any* written materials, including, but not limited to: the casebook, other required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines. You may not use a computer other than in its ExamSoft mode.
10. **Format:** The exam consists of two parts which count toward your grade in proportion to the amount of time allocated.

PART ONE comprises 10 multiple choice questions worth three points each, for a *combined* total of 30 points. The suggested total completion time is **30 minutes**.

PART TWO comprises one essay question worth 50 points. The suggested completion time is **50 minutes**.

- 11 **Grading:** All exams will receive a raw score from zero to 80. The raw score is meaningful only relative to the raw score of other students in the class. The only “real” letter grade is that computed at the end of the course by summing the midterm, final, and quiz scores. But for informational purposes only, I will estimate a letter grade for your midterm. Your raw score will be converted into a scaled score, based on the class curve. For example, if the highest raw score in the class were 60 of 80, then that student would typically receive an “A.” I will post an explanatory memo and a model answer to TWEN a few weeks after the exam.
- 12 **Special Instructions:** Instructions specific to each exam section are printed immediately below.

SPECIAL INSTRUCTIONS FOR PART ONE:

1. **Format:** This Part contains 10 multiple choice questions, worth three points each, for a combined total of 30 points. This part has a suggested completion time of 30 minutes. Please note that the questions vary in both length and complexity. You might answer some in 30 seconds and others in three minutes.
2. **Identification:** Write your Student ID *both* on the first page of this exam booklet. *and* on the Scantron form. Fill in the corresponding ovals.
3. **Fill the Oval on the Scantron:** For each question, *fill in* the oval on the Scantron corresponding to the best answer choice.
4. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why in a separately marked section of your Bluebook or ExamSoft file. Your objection must (i) identify the ambiguity or problem in the question and (ii) reveal what your answer would be for all possible resolutions of the ambiguity. I do *not* expect this to be necessary.

SPECIAL INSTRUCTIONS FOR PART TWO:

1. **Submission:** Write your *essay* answers in your Bluebook examination booklets or ExamSoft file. I *will not* read any material which appears only on scrap paper.
2. **Legibility:** Write legibly. I will do my best to read your handwriting, but must disregard (and not give you points for) writing that is too small to read or otherwise illegible. *I am serious; write neatly.*

3. **Outlining Your Answer:** I strongly encourage you to use one-fourth of the allotted time per question to outline your answers on scrap paper *before* beginning to write in your exam booklet or ExamSoft file.

Do this because you will be graded not only on the substance of your answer but also on its clarity and conciseness. In other words, organization, precision, and brevity count. If you run out of insightful things to say about the issues raised by the exam question, stop writing until you think of something. Tedious repetition, regurgitations of law unrelated to the facts, or rambling about irrelevant issues *will* negatively affect your grade.

4. **Answer Format:** This is important. *Use headings and subheadings.* Use short single-idea paragraphs (leaving a blank line between paragraphs).
5. **Answer Content:** Address *all* relevant issues that arise from and are implicated by the fact pattern and that are responsive to the “call” of the question. Do not just summarize all the facts or all the legal principles relevant to an issue. Instead, *apply* the law you see relevant to the facts you see relevant. Take the issues that you identify and organize them into a coherent structure. Then, within that structure, examine issues and argue for a conclusion.
6. **Citing Cases:** You are welcome but *not* required to cite cases. While it is sometimes helpful to the reader and a way to economize on words, do not cite case names as a complete substitute for legal analysis. For example, do *not* write: “Plaintiff should be able to recover under *A v. B.*” Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?
7. **Cross-Referencing:** You may reference your own previous analysis (*e.g.* B’s battery claim against C is identical to A’s, above, because __.” But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
8. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize the key weaknesses in your position and make the argument on the other side.
9. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (reasonably implied by, suggested by, or at least consistent with, the fact pattern) that you believe to be necessary to answer the question.

STOP !

**Do NOT turn this page
until the proctor signals**

PART ONE

10 questions worth three points each = 30 points
Suggested Time = 30 minutes

- 1. Hockey player Wayne signs a written consent form for the team doctor, Dr. Cutt, to do a knee operation. After Wayne goes under anesthesia, Doctor Cutt asks Doctor Super, a previously unmentioned, famous orthopedic surgeon from Johns Hopkins, to do the knee operation. Doctor Super's skills are superior to Doctor Cutts' skills, and the operation was successful. In an action for battery, Wayne:**

 - A. Will prevail because he did not agree for Dr. Super to do the operation.
 - B. Will not prevail because his consent was in writing.
 - C. Will not prevail because the operation was a success.
 - D. Will not prevail because Dr. Super's skills were superior.

- 2. Rubber Duck was driving a truck full of delicious Hostess Twinkies, when a tire unexpectedly blew out. This caused the truck to swerve and crash onto the land of Lois Land that bordered the highway. Twinkies were spilled everywhere. Rubber Duck returned later with another truck to clean-up the Twinkies and pull out and tow the first truck. If Louis Land asserts a claim of trespass to land, what will he recover?**

 - A. Nominal damages only.
 - B. All damages resulting from the spill onto the land.
 - C. All damages resulting from the removal with the second truck.
 - D. No damages.

3. **1L and 2L are old friends from college where they constantly played practical jokes on each other. They sit around in law school laughing about all the tricks they pulled and continue to pull. One day, 2L bought a rubber spider from a toy store. 2L, knowing that 1L is very afraid of spiders, placed the spider on 1L's *Torts* book. Later, when 1L went to study *Torts*, he saw the spider. Believing it to be real and being afraid, 1L screamed, fainted, and fell on the floor. 1L sues for assault. What would be most effective in 2L's defense?**
- A. 1L's fear of a spider bite is not a reasonable apprehension of harmful or offensive contact.
 - B. A reasonable person in 1L's position would not have been apprehensive at seeing a spider.
 - C. 1L impliedly consented by engaging in a course of conduct of practical jokes.
 - D. 2L was not substantially certain that 1L would be injured as a result of the joke.
4. **You are crossing the Concord Pike with red lights in all directions when you see a fellow law student, Annie, already in the crosswalk and in the path of a car speeding toward her. You run into the street and push Annie out of the way. She falls and breaks her leg. In her action for battery, Annie:**
- A. Will prevail because you could have shouted a warning instead of pushing her.
 - B. Will prevail if she was not actually in danger and you should have realized that.
 - C. Will not prevail because the driver, not you, was responsible for her injury.
 - D. Will not prevail if your intent was to save her, not to cause her harm.
5. **Hare Krishna Harry is out recruiting followers. He approaches a house with a sign that states in large red letters: "No Trespassing! Proceed at Your Own Risk!" Harry, though uninvited, ignores the sign and proceeds to the house. An explosive under the path explodes and Harry is injured. Will Harry recover?**
- A. Yes, unless the homeowner only wanted to deter and not actually harm intruders.
 - B. Yes, if the homeowner was responsible for placing the explosive.
 - C. No, because Harry ignored the sign that clearly warned him from approaching.
 - D. No, if the homeowner reasonably feared that intruders would come and harm him and/or his family.

6. **Plaintiff sues for battery. Plaintiff is bad tempered and defendant knew that he carried a gun and used it often. Plaintiff struck first. During the fight, plaintiff tried to reach for his gun many times. Defendant's blows on plaintiff resulted in plaintiff's hospitalization. The fact that would most likely result in a defense verdict is:**
- A. Defendant used no more force than he actually believed necessary to protect himself from harm.
 - B. Defendant used no more force than he reasonably believed necessary to protect himself from harm.
 - C. Defendant in fact feared death or serious bodily harm.
 - D. Defendant was justified in retaliating because plaintiff struck the first blow.
7. **Finn's beloved cat, Milo, worth about \$75, frequently trespassed on Finn's neighbor's property. Finn's neighbor asked Finn many times to keep his cat on his own property. But the cat kept coming onto the neighbor's property. Aware of Finn's very strong attachment to Milo, the neighbor killed the cat with a shotgun in full view of Finn. Finn suffered great psychological harm. Under which of the following could Finn recover:**
- A. Battery
 - B. IIED
 - C. Conversion
 - D. B and C
 - E. All of the above
8. **Reina owns a large tract of rural land on which she sought to protect some wild horses. She posted numerous "No Hunting" and "No Trespassing" signs. But hunters still kept coming to hunt the horses for sport. Reina next built a nine-foot fence topped with razor wire. National Geographic photographer Larry asked Reina if he could enter her land to take photos of the wild horses. Afraid that the publicity would exacerbate the wrongful entry problems, Reina refused permission. Undeterred, Larry climbed the fence but got entangled and cut. His cuts got infected and he died. Larry's wife sues Reina. Will she prevail?**
- A. No, because Larry entered Reina's land after she refused permission.
 - B. No, because the potential harm from the barbed wire was apparent.
 - C. Yes, because Reina had no property interest in the wild horses and was therefore not privileged to use force to protect them.
 - D. Yes, because Reina cannot use deadly force to protect her land.

9. **Fern was playing soccer at a local field when he was injured. Fern and defendant were on opposing teams that tried to obtain possession of the ball. Fern was struck in the shin and thigh by defendant's foot. The evidence shows that the game was rough from the start. Elbows and kicks were used to discourage interference. Even Fern was using such tactics. In his action, will Fern prevail?**
- A. Yes, if defendant intended to strike Fern with his foot.
 - B. Yes, if defendant intended to cause a harmful or offensive contact with Fern.
 - C. No, because Fern impliedly consented to rough play.
 - D. No, unless defendant intentionally used force that exceeded Fern's consent.
10. **Ashley and Mary-Kate Olson are identical twins. Nobody can tell the difference between them. Ashley was angry at Bob Saget and said, "You better keep the hell out of my way, Saget. The next time I find you around here I will kick your ass." About a week later, Saget saw Mary-Kate coming toward him. Mary-Kate, fondly remembering her days with Saget on the television series *Full House*, raised her hand to wave to Saget. But thinking that Mary-Kate was Ashley, Saget feared bodily harm and struck Mary-Kate. If Mary-Kate asserts a claim against Saget and he asserts a self defense privilege, Saget:**
- A. Will prevail only if he honestly thought that Ashley was about to attack him.
 - B. Will prevail only if the reasonable person would have believed that Ashley was about to attack him.
 - C. Will not prevail, because Mary-Kate was not the aggressor.
 - D. Will not prevail, unless Mary-Kate intended her gesture as a threat.

----- **END OF PART ONE** -----

PART TWO

1 essay question worth 50 points

Suggested time = 50 minutes

Pitter and Donatello had been friends and neighbors in Philadelphia for several years before enrolling at Widener Law School. Early on in their friendship, Pitter and Donatello found that they shared a common love for Philadelphia cheesesteaks, especially those served at Sleazy Sam's. Donatello loved the cheesesteaks at Sleazy Sam's so much that he took a job at there as a delivery person. Donatello was soon well-known as one of Sleazy Sam's hardest working and most dedicated employees. Donatello was on a break one night at Sleazy Sam's, when Pitter walked into the restaurant. Happy to see his friend, Donatello suggested that they dine together.

The two ordered their cheesesteaks and settled into a booth. As they waited for their meals, Pitter began to tell Donatello about the wonderful cheesesteak that she had just tried at a new restaurant in Wilmington, Delaware. Pitter even went so far as to suggest that the new restaurant served better cheesesteaks than Sleazy Sam's. Donatello, being the dedicated Sleazy Sam's employee that he was, scoffed at the suggestion. As Pitter and Donatello received their order and started eating, however, Pitter reiterated that the cheesesteaks at the new restaurant were much better and that she now had a new *favorite* cheesesteak restaurant.

Pitter's words were too much for Donatello to stomach. When Pitter would not take those words back, Donatello grabbed half of Pitter's cheesesteak and hurled it at her head. Pitter quickly ducked out of the way, and the cheesesteak hit another customer in the next booth, Justin, in the back of the head. The force of the thrown cheesesteak caused Justin to fall to the ground and sprain his knee. Having failed to hit Pitter with his cheesesteak, Donatello lunged at Pitter and began punching her repeatedly in the head and chest. Pitter, while smaller than Donatello, was able to pull out a clump of Donatello's hair, but this failed to stop the attack. Pitter was left with a split lip and several bruises by the time that bystanders were able to subdue Donatello.

Please fully assess all intentional tort claims that can be brought by any party.

----- END OF PART TWO -----