

<b>Instructor</b>	<b>Professor Thaddeus Mason Pope</b>
<b>Course Title</b>	<b>Torts: The Common Law Process</b>
<b>Format</b>	<b>Take Home Midterm Exam</b>
<b>Total Time for Exam</b>	<b>4 hours and 20 minutes</b>
<b>Total Number of Pages</b>	<b>14 pages</b>

### Reference Materials Allowed

Open Book (all reference materials allowed)

### Take-Home Exam Instructions

1. Please know your **correct Fall 2016 exam number** and include this number at the top of each page of your exam answer (for example, in a header).
2. Confirm that you are using and have typed the **correct exam number** on your exam document.
3. You may download the exam from the course TWEN site any time after 1:00 p.m. on Saturday, October 8, 2016. All exam answers must be submitted by 5:20 p.m. Therefore, you will want to download your exam no later than 1:00 p.m. to ensure that you have the full allowed time to complete your exam.
4. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to TWEN. Use your exam number as the name for the PDF file.

### Instructions Specific to This Examination

#### GENERAL INSTRUCTIONS:

1. **Honor Code:** While you are taking this exam, you are subject to the Mitchell Hamline Code of Conduct. You may not discuss it with anyone until after the end of the entire exam period. It is a violation of the Code to share the exam questions. Shred or delete the exam questions immediately upon completion of the exam. They will be reposted after the end of the exam period.
2. **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.
3. **Exam Packet:** This exam consists of **14 pages**, including this cover page. Please make sure that your exam is complete.

4. **Identification:** Write your exam number on the top of each page of your exam answer.
5. **Anonymity:** The exams are graded anonymously. Do not put your name or anything else that may identify you (except for your exam number) on the exam. **Failure to include your correct exam number will result in a 10-point deduction.**
6. **Total Time:** Your completed exam is due by 5:20 p.m. If your exam is uploaded after that time, then your exam grade will be **lowered by one point** for every minute in excess. If the timestamp on your uploaded exam indicates that you have exceeded the time limit by more than 15 minutes, the situation may be referred for a Code of Conduct investigation and potential discipline. Please save sufficient time to successfully upload your exam.
7. **Timing:** The exam has been written as a 90-minute exam. A student could write basically complete answers to all the questions in 90 minutes. But since this is a take-home exam, you will want to take some extra time (perhaps one-half hour) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps one-half hour) to revise and polish your answers, such that you will not be submitting a “first draft.” In short, while this is a 4-hour take home, you really need not spend more than around 2½ hours on this exam.
8. **Scoring:** There are 75 total points on the exam. The final exam comprises 25% of your overall course grade, 75 of the 300 total course points.
9. **Open Book:** This is an OPEN book exam. You may use any written materials, including, but not limited to: any required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines.
10. **Additional Research:** While you may use any materials that you have collected for this class, you are neither expected **nor are you permitted** to do any online or library research (e.g. on Lexis, Westlaw, Google, reference materials) to answer the exam questions.
11. **Format:** The exam consists of two parts:
  - PART ONE** comprises 15 multiple choice questions.  
These are worth 1 point each, for a combined total of 15 points.
  - PART TWO** comprises two essay questions.  
One is worth 35 points, and the other is 20, for a combined total of 55 points.
12. **Grading:** All exams will receive a raw score from zero to 75. The raw score is meaningful only relative to the raw score of other students in the class. Your course letter grade is computed by summing the midterm, final, and quiz scores. I will post an explanatory memo and a model answer to TWEN a few weeks after the exam.

**SPECIAL INSTRUCTIONS FOR PART ONE:**

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 15). Next to each number type the letter corresponding to the best answer choice for that problem.
2. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why immediately after your answer choice. 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:** In your exam document create clearly marked separate sections for each of the two problems. You do not need to “complete” the exam in order. But your exam answer document must be structured in order:  
    Essay 1  
    Essay 2
2. **Outlining Your Answer:** I strongly encourage you to use at least one-fourth of the allotted time per question to outline your answers on scrap paper before beginning to write. 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.
3. **Answer Format:** This is very important. **Use headings and subheadings.** Use short single-idea paragraphs (leaving a blank line between paragraphs). Do not completely fill the page with text. Leave white space between sections and paragraphs.
4. **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.
5. **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?

6. **Cross-Referencing:** You may reference your own previous analysis (e.g. B's claim against C is identical to A's claim against C, because \_\_.") But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
7. **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.
8. **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. Do not invent facts out of whole cloth.

### **Exam Misconduct**

The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted by the exam or proctor, prohibited conduct includes:

- Discussing the exam with another student
- Giving, receiving, or soliciting aid
- Referencing unauthorized materials
- Reading the questions before the examination starts
- Exceeding the examination time limit
- Ignoring proctor instructions

# Multiple Choice Questions

- 15 Questions worth 1 point each, for a total of 15 points

1. **Dr. House was a plastic surgeon. Ivanka came to his office to have a facelift. One of the nurses interviewed Ivanka to find out what she wanted by way of treatment. In the course of the interview Ivanka showed the nurse a tattoo that was from a failed romance. One of the other doctors in the office reviewed Ivanka's chart and interviewed her, and scheduled the facelift for September 15. Ivanka signed an "informed consent" form that specified the facelift as the procedure she had chosen. On the day of the surgery, House had Ivanka anesthetized, and proceeded to perform the facelift. Once it was completed, House asked if anything further was needed, and the assistant mistakenly read the chart as showing that Ivanka also wanted the tattoo removed. House did so.**

**If Ivanka sued House for battery as a result of House removing the tattoo, would she prevail?**

- A. Yes, because House did not get consent.
  - B. Yes, because House exceeded the scope of the consent he was given.
  - C. No, because House was unaware of her lack of consent to the tattoo removal
  - D. No, because Ivanka benefitted from the procedure.
2. **Stallone was a security officer for the 1<sup>st</sup> Bank of Minnesota. He was on duty at 10:00 a.m. on a Wednesday morning when a customer ran hurriedly from the bank with a large bag in her hand. Stallone thought that a robbery had just occurred, so he yelled at the fleeing customer, "Stop or I'll shoot!" Jennifer was just entering the bank when she heard Stallone yell his warning. She froze in terror.**

**If Jennifer sued Stallone for assault, would she prevail?**

- A. Yes, because Stallone's conduct was unjustified
- B. Yes, because deadly force is not permitted merely to prevent property theft
- C. No, because Stallone didn't intend to assault Jennifer
- D. No, if a person of reasonable sensibility would not have experienced fear

3. **Holly Golightly was a manager at Tiffany’s Jewelry. The store had several million dollars of precious stones. Paul walked into the store one day and asked to look at a diamond ring with a 2-carat stone. Holly observed him from behind a one-way mirror located near the counter where Paul was looking at the diamond. Holly looked away for thirty seconds to check a text message on her phone. When she looked back, she saw the clerk putting away something in the jewelry case, and Paul putting something in his pocket. Paul hurriedly walked toward the exit. Holly called the security guard, who detained Paul to see whether he had stolen the diamond.**

**If Paul sues Tiffany’s for false imprisonment, will he prevail?**

- A. Yes, if Paul in fact did not have the diamond
  - B. Yes, if Paul didn’t have the diamond and Holly ’s failure to observe him for the entire time was unreasonable
  - C. No, because a shopkeeper is entitled to detain suspected shoplifters
  - D. No, because the high dollar value of the diamond justifies heightened protections against shoplifting
4. **Sally was a construction worker who worked for a local asphalt company. Varjak was driving on Snelling Avenue while a portion of it was being repaved. Normally four lanes, Snelling had been reduced to two lanes, one in each direction. Sally was using a shovel to scrape the loose asphalt that fell from the truck that was delivering hot asphalt for the repaving operation. Some of the loose asphalt fell into the lane where Varjak was driving, and Sally walked over to scrape it. Varjak honked his horn at Sally but Sally didn’t pay attention to him. Varjak slammed on his brakes and rolled down his window. “You fucking moron, why don’t you get the fuck out of the way!” shouted Varjak.**

**If Sally sued Varjak for the intentional infliction of emotional distress, what result?**

- A. Sally prevails, because Varjak’s conduct was outrageous
- B. Sally prevails, because Varjak intended to inflict emotional distress
- C. Varjak prevails, if Sally didn’t suffer severe emotional distress
- D. Varjak prevails, because the conduct did not rise to the level of conduct that is utterly intolerable in a civilized community

5. **Monica had a crush on Chandler. Chandler wore a distinctive fedora. She decided to surprise him one day by presenting him with a bouquet of flowers to show her affection. She saw someone of Chandler's height wearing the same kind of fedora walking down the hallway at the law school. Monica ran up behind him, threw her arms around his waist and held the bouquet up to his nose. At the same time, she kissed him on the cheek. It turned out that the recipient of this gesture was not Chandler but rather Joey.**

**If Joey sued Monica for battery, what would be the likely result?**

- A. Liable, because her conduct would be offensive to a person of reasonable sensibility
  - B. Liable, but only if Joey suffered substantial harm
  - C. Not liable, if Monica didn't intend her actions to cause harm
  - D. Not liable, if a person of reasonable sensibility would not find the conduct offensive
6. **Stallone, the security guard at Mitchell Hamline School of Law, was responsible for locking up the library at night. The library was open until 12:00 a.m. most nights and Stallone was instructed to lock the doors at midnight. However, during finals week the security guards were told to wait until 1:00 a.m. to lock up because the librarians often let students stay later. Because of a snowstorm the law school decided to extend the finals period for an additional two days. An email was sent to all of the security guards informing them of the extension, and a large sign was posted in the security office where Stallone changed into his uniform at the beginning of his shift: "Remember 'finals week' will last through tomorrow." Despite these warnings, Stallone locked up the library at midnight, and two students who tried to leave at 1:00 a.m. discovered that they were locked in and were finally let out when the building was unlocked the following morning.**

**If Stallone were sued by the students for false imprisonment, what result?**

- A. Liable if the students were confined within fixed boundaries and Stallone was at least reckless in causing their confinement
- B. Liable, unless the students did not suffer any physical harm
- C. Not liable, unless Stallone actually intended to imprison the students, or it was virtually certain that he would do so
- D. Not liable, if there was a means of escape, even if the students were unaware of the means of escape

7. **Peggy was a waitress at Café Latte restaurant. One night, Peggy was extremely tired from caring for her sick child, and while carrying a large tray of food she bumped into the leg of a chair and spilled several dishes on the floor. The stress was so much for her that she just burst into tears and ran into the kitchen saying, “Somebody needs to clean up over near Table 12, because I just can’t do it anymore.” Her boss, Battin, told her, “You get your damn ass out there and do your job, or you’re fired.” Peggy grabbed Battin by the lapels and shouted at him, “You rotten asshole, if you say one more thing to me I’m going to punch your lights out!”**

**If Battin sued Peggy for assault, what result?**

- A. Battin prevails, if Battin found her contact with him offensive;
  - B. Battin prevails, if Peggy intended to have offensive contact with Battin
  - C. Peggy prevails, if Peggy did not cause Battin to fear imminent harmful or offensive contact;
  - D. Peggy prevails, because Battin might not have said one more thing.
8. **Dr. Marshall was a well-respected doctor at Regions Hospital. Mary Faith, aged 34, was pregnant with her first child when she began experiencing labor pains and was taken by ambulance to the hospital. Despite efforts to postpone the delivery, Dr. Marshall and the hospital staff unable to prevent Mary Faith from giving birth, and because her baby was born significantly premature, it died. Mary Faith was heavily sedated during the latter stages of the delivery, and was wheeled to the recovery room. When she began to recover consciousness, she asked about her baby and the staff said that Dr. Marshall would come and talk to her. Dr. Marshall was in the break room trying to collect himself after 13 hours of seemingly nonstop emergencies when he was summoned by the staff to the recovery room. Once there, Mary Faith asked Dr. Marshall, “Where’s my baby?” Marshall answered, “It’s dead,” and started to leave the room. Mary Faith burst into tears and said, “But was it a boy or a girl?” “I don’t remember,” said Dr. Marshall, “but it sure as heck doesn’t matter now.” He then called for the staff to take care of her. Mary Faith was wailing uncontrollably and it took the staff two hours to get her to calm down.**

**If Mary Faith sued Marshall for the intentional infliction of emotional distress, what result?**

- A. Mary Faith prevails, if Marshall’s conduct caused her severe emotional distress
- B. Mary Faith prevails, if a reasonable person in her place would have suffered severe emotional distress
- C. Marshall prevails, if he did not intend to inflict emotional distress
- D. Marshall prevails, if his comments were factually accurate

9. Ian was riding the subway. He had previously been in a serious bicycle accident that left him subject to extreme sensitivity in his right shoulder, although from outward appearances he looked perfectly normal. Although the subway car was relatively empty, Paul took up a position standing right next to Ian. When the subway lurched to a stop, Paul was thrown forward, bumping into Ian, causing him considerable pain.

**Could Ian recover damages from Paul based on a claim of battery?**

- A. Yes, because the injury was substantially certain to occur.
  - B. Yes, because Paul should have taken his seat rather than stand.
  - C. No, because Paul didn't intend the contact.
  - D. No, so long as Paul didn't intend either harmful or offensive contact.
10. Hopkins was directing a movie that included a scene featuring an off-duty police officer who is in a convenience store when an armed robbery takes place. Hopkins had arranged with a local convenience store to close the store at 10:00 p.m. so that the filming could take place, and had a large film crew and actors assembled to shoot the scene. At midnight Johns had been driving on the highway on which the convenience store was located when she ran out of gas. Seeing the lights of the convenience store in the distance she decided to walk toward it with a gas container she found in the trunk in the hope of getting a gallon of gas. As she got closer Johns thought the convenience store was unusually busy, but she was relieved to see it was still open. Before she recognized that it was a movie scene, an actor came running out of the convenience store waving a pistol. Johns was extremely frightened.

**If Johns sued Hopkins for assault, would she prevail?**

- A. Yes, if Hopkins was reckless in causing her to be frightened
- B. Yes, but only if it were substantially certain that Johns would experience apprehension of an imminent harmful or offensive contact
- C. No, if Johns was unreasonable in failing to recognize that it was a movie set
- D. No, if Hopkins thought that Johns was just part of the movie set

- 11** Stallone worked as a security guard for a large department store. He was looking forward to a party that his parents were hosting, and so he was anxious to finish his shift and take off. Smurfette and Claudette were trying on clothes in the women's department when Stallone turned out all the lights and prepared to lock up. Smurfette and Claudette shouted when the lights went out, but Stallone did not hear them because he was listening to music on his iPhone. Stallone locked the place up and took off. Smurfette and Claudette used the "flashlight" feature of their iPhones to find their way to the door of the department store, but everything was locked up. They weren't able to get out of the store until the following morning. If they sued the store for false imprisonment, what result?
- A. Smurfette and Claudette prevail, because they were confined within fixed boundaries and were aware of their confinement
  - B. Smurfette and Claudette prevail if they can show that Chessman was at least reckless in failing to recognize their presence
  - C. Chessman and the store prevail, because the confinement wasn't intentional;
  - D. Chessman and the store prevail, unless Smurfette and Claudette suffered severe emotional distress
- 12.** Harrison was a famous actor. He was sitting on an airplane that was supposed to take off at 3:00 p.m. but had been sitting on the airport runway past 4:30 p.m. Prior to boarding the plane Harrison had purchased several drinks from an airport bar and was quite tipsy when he got on. Joan, a flight attendant, was walking down the aisle when Harrison spotted her and shouted, "When's this fucking plane going to take off?" Joan told him to be quiet and stay in his seat. Harrison responded, "If you can't get this damn plane in the air, at least give me a drink!" Joan told him that unless he shut up and stayed in his seat she would have him thrown off the plane. Harrison responded, "You do that and I'll get you fired!" If Joan sued Harrison, the most likely outcome would be:
- A. Joan prevails on a claim alleging the intentional infliction of emotional distress
  - B. Joan prevails on an assault claim
  - C. Harrison prevails if he was too drunk to realize what he was doing
  - D. Harrison prevails unless Joan suffered severe emotional distress

13. **Blonde and Brunette were good friends. Brunette knew that Blonde was once married to Bradshaw, a professional NFL football player, but now she was a single mother with a 15-year-old son. Brunette arranged for Nelson to call her while Blonde was visiting. When she answered the phone, Brunette pretended it was Bradshaw. "Oh, really?" Brunette said. "Yes, she's here. I'll put her on speaker phone." Brunette then turned to Blonde and said, "Blonde -- it's Bradshaw on the phone." Blonde fainted. Unbeknownst to Brunette, Bradshaw had been reported missing and presumed dead after a canoe accident in the Boundary Waters.**

**Which of the following is true?**

- A. Brunette is liable to Blonde for battery, if it was substantially certain that Blonde would suffer physical harm from her actions.
  - B. Brunette is liable to Blonde for assault, if it was substantially certain that Blonde would experience apprehension as a result of Brunette's conduct.
  - C. Both (a) and (b) are correct;
  - D. Neither (a) nor (b) is correct.
14. **Janitor was a custodian at a large office building. Misty and Christy, partners in a law firm that occupied the top floor of the building, were working late one night on a corporate merger. Janitor had been instructed to make sure that the glass doors at the entrance to the law firm were securely locked when he left the building. Janitor thought he heard voices in the conference room while he cleaned the other offices, but he assumed it was just a television set that had been left on. Two hours after he locked the front doors and left, Misty and Christy finished their work and were heading home when they discovered that the only exit was closed.**

**If Misty and Christy sued Janitor for false imprisonment, which of the following is true?**

- A. Janitor would not be liable unless he intended to confine Misty and Christy
- B. Misty and Christy could only recover if they suffered damage as a result of being locked in
- C. Both (a) and (b) are correct
- D. Neither (a) nor (b) is correct

15. Alex rode the Green Line light rail every day, during rush hour when the cars were usually crowded. He made a point of standing next to Denise who commuted on the subway to her job at the Soy Bean stock exchange. Denise found his presence annoying, but she would acknowledge that she might be called hypersensitive. The Snelling Avenue stop where she got on the train was further down the line, so she typically couldn't get a seat and had to stand. Typically, Alex was already on the train car when she entered. Even if he was already seated, Alex would offer his seat to someone else and work his way over to where she stood. The jostling of the train car resulted in Alex bumping up against her.

If Denise sued Alex for battery, which of the following is correct?

- A. Denise would prevail if she could show that Alex intended to have contact with her, which he knew that she would find offensive
- B. Alex would prevail if a reasonable person would consider the contact a normal aspect of riding in a crowded subway car
- C. Both (a) and (b) are correct
- D. Neither (a) nor (b) is correct

# Essay Question 1

- 1 Question worth 35 points
- Please limit each response to 1500 words.

After recent terrorist threats, Mitchell Hamline School of Law decided to place metal detectors in its front entrance. Mitchell Hamline also marked off an area just beyond the metal detectors in which to search students and visitors who failed the metal-detector test. Mitchell Hamline posted a sign near the entrance that read: “Warning! No metal objects allowed inside. All entrants are screened and may be searched.”

Law students Gigi and Alex saw the warning sign as they entered Mitchell Hamline. After entering, they observed several other students being frisked. Gigi said to Alex, “I’m certainly not going to allow anyone to touch me!”

Gigi then walked through the metal detector, which buzzed. Without asking Gigi’s permission, Inspector Morse, a Mitchell Hamline employee, approached Gigi from behind and began to frisk her. Gigi leaped away from Morse and snarled, “Get the fuck off me. Leave me alone!” Inspector Lewis, another Mitchell Hamline employee, then used a stun device, which administers a painful electric shock, to subdue Gigi.

Unfortunately, the stun device, manufactured by Best-Bye, malfunctioned and produced a shock considerably more severe than that described in Best-Bye’s product specifications. The shock caused minor physical injuries and triggered a severe depressive reaction that necessitated Gigi’s hospitalization. Gigi had a history of depression but was in good mental health at the time of the shock. Gigi was the first person who had ever experienced a depressive reaction to the Best-Bye device.

The Best-Bye device malfunctioned because it was incorrectly assembled at the factory and therefore did not meet Best-Bye’s specifications. Best-Bye’s assembly-inspection system exceeds industry standards, and it is widely recognized as the best in the industry. Nonetheless, it did not detect the assembly mistake in the device that injured Gigi.

Mitchell Hamline has conceded that the actions of Inspectors Morse and Lewis were within the scope of their employment. Mitchell Hamline had instructed its employees to ask permission before frisking students, but on the day Gigi was frisked, a supervisor told employees to frisk without asking permission in order to speed up the entrance process.

**Identify and assess the intentional tort claims that Gigi can plausibly establish against any party.**

## Essay Question 2

- 1 Question worth 20 points.
- Please limit your response to 1000 words.

For many years, Trump has owned property in a relatively undeveloped area near Four Points Lake, Minnesota. Seven years ago, Vary-Zone Telephone Company erected a cell phone transmission tower on Four Points Lake, not far from Trump's property.

Four years ago, Trump built a cabin on his property. He began to spend most of his free time there engaging in bird watching and other outdoor activities.

Last year, Vary-Zone leased space on the transmission tower for an emergency alert siren and agreed to install the siren and to test it regularly. This site was chosen, because it allows the siren's warning to carry farther than from any other site.

Vary-Zone promptly installed the siren. Since its installation, it has tested the siren for a five-minute period weekly. The resulting sound is so loud, that it causes Trump to stop whatever he is doing and cover his ears. Sometimes, the sound startles Trump, causing him to spill his coffee or drop his binoculars. It also greatly reduces the local bird population.

Two months ago, Trump sent a letter to Vary-Zone outlining the effects of the siren and demanding that it cease its activities. But Vary-Zone has not responded to Trump's demand.

**Does Trump have any intentional tort claims against Vary-Zone? Discuss.**

# END OF EXAM