

REMEDIES MID-TERM EXAM
Professor Sophie Sparrow – Spring 2007

Please first read the instructions, then put your exam number below.
I have read and understand the instructions.

EXAM NO. _____

Instructions

This examination is worth 100 points out of 500 in the course. The total points that can be earned are 102. More important than the points is the practice you will get from completing this exam.

This is a **closed book** exam. You may talk to **NO ONE** about this exam until you are authorized to do so.

This exam is **9 pages long**. Make sure you have all of the pages. This is a 90-minute closed-book exam; you have 90 minutes to complete it.

In the **bluebooks**, please put your exam number on the front of each bluebook. Please write on only **one side** of each page of the bluebook.

Part I of the exam consists of 3 multiple-choice questions. **Complete Part I of the exam on the exam itself.** Part I of the exam is worth 12 points – 4 points for each question. Suggested time for Part I is 10 minutes. Facts from or answers to previous questions do not apply to subsequent questions unless indicated.

For each **multiple choice question**, circle the letter that corresponds to the best answer. Circle only one letter for each question. You may explain your answers by writing responses below the question or by writing on the opposite side of the page. **You do not need** to explain any answer to a multiple choice question. If you choose to write an explanation, it will not result in the loss of points for a correct answer no matter what your explanation says. If your explanation of an incorrect answer shows an ambiguity or problem in a question or response option and your explanation shows that you understand the relevant concept and its application to the facts in the question, you will receive full credit for your answer.

Part II of the exam consists of 1 short answer question. Part II of the exam is worth 30 points. Suggested time for Part II is 25 minutes. Please write your answer to Part II in bluebooks.

Part III of the exam consists of an essay question. It is worth 60 points. Suggested time for Part III is 55 minutes.

I will not answer any questions during the exam.

Because some of your classmates may be taking the exam at a different time, **do not discuss the exam until you are authorized to do so.** You are responsible for ensuring that no information about this exam is heard or made known to any student who has not yet taken this exam and fully completed it.

You must return all 9 pages of this exam.

"Tips" for taking this exam:

- Read the "entire" of the question" and the specific instructions first. Determine the specific relevant legal issues before reading through the entire fact pattern.
- Read the question carefully before beginning to write your response. The facts are critical to analyzing the questions asked. Ask yourself, "Why might this fact have been included, and is it relevant to a complete analysis of the problem?"
- State any assumptions you make.

I will be looking for your ability to:

- Identify the precise legal issue(s) raised by the specific facts;
- Confine your analysis to the specific issue(s) raised, rather than discussing general law;
- Show your knowledge of legal principles and "rules";
- Use relevant legal principles and "rules" to analyze legal issues; and
- Present your responses in a concise, precise and organized way.

Remember that I can assess your knowledge and abilities only by what I see and read in your written responses; **EXPLICITLY present the steps in your reasoning.**

Relax, breathe and do your best.

Remember, we wouldn't have admitted you to law school unless we believed you could be a successful lawyer!

Enjoy the break.

Question 2 (4 points)

Max is self-employed as a caretaker of homes in the suburbs of New Orleans. As a caretaker, he checks on his clients' homes at least once a week, making minor repairs as necessary. When the weather is threatening, he checks on his client's homes more often. Before major storms, Max boards up windows, covers fragile structures and plants, and does other preventive tasks that protect his clients' modest homes. Two of Max's clients are Hardy and Sonya. They only use Max when they are out of town; they do not engage his services on a weekly basis.

On January 31, Hardy and Sonya heard that their first grandchild had been born three weeks early. They promptly packed up and left for a week-long visit to help out the family. In their excitement over the news of the baby and the rush to leave town, they forgot to tell Max that they were leaving and ask him to check on their home. On February 1, Hardy and Sonya learned of impending storms hitting the area near their home. They called and left a message on Max's answering machine that they were out of town and needed him to check up on and protect their home. On February 2, a tornado tore through their suburb, tearing off the roof of Hardy and Sonya's home and resulting in serious property damage, estimated at \$50,000. They are planning to sue Max for the damage to their home, claiming he was negligent in not checking his messages and protecting their home before the tornado hit. Max agrees that he was partially at fault for not checking his answering machine but that he was too busy rushing around trying to protect those clients' homes he knew needed his help. Hardy and Sonya agree that they too were partially at fault for not notifying Max earlier, and for not taking other steps to protect their home. Hardy and Max recently updated their homeowner's insurance, which will cover 90% of their property damage. The jurisdiction **does not** follow the traditional collateral source rule.

What is Max's best argument to reduce his liability for \$50,000 damages to Hardy's and Sonya's property?

- (A) The likelihood of the sudden tornado damaging Hardy and Sonya's home was too speculative to permit them to recover damages.
- (B) Hardy and Sonya's failure to notify Max earlier significantly reduces the amount of damages they could recover from Max.
- (C) Hardy and Sonya will be overcompensated if they recover damages from Max.
- (D) Max has few assets and his care-taking insurance will only pay for \$10,000 of Hardy and Sonya's damages.

Explanation (optional)

Question 3 (4 points)

Dani runs her personal trainer business out of her home. Over the years, Dani has become very sensitive to smells, particularly strong perfumed scents. These scents make her dizzy and nauseous. Because of her reactions to scents, Dani has posted signs in her home asking her clients not to wear strong scents when they come for a training session. In addition, in all the literature Dani gives her clients, she has written in large letters that she can not conduct sessions when clients are wearing strong scents, because they make her dizzy and nauseous. Dani has all her clients sign contracts, which state that clients recognize the dangers of wearing strong scents and agree not to use them before or during training sessions.

One of Dani's clients, Bill, has become disillusioned with the training sessions, and has told his friends that he plans to get back at Dani. He hates doing any kind of physical activity outside of his weekly training sessions with Dani, but still expects to be stronger, leaner and fitter after only 4 training sessions. Annoyed with Dani, and wanting to make her miserable for his lack of improvement, Bill brings a bottle of a very strong men's cologne to a workout. Seeing the cologne bottle in Bill's bag, Dani reminds him of her heightened sensitivity to strong scents. Bill reassures her that he knows, but that he will put it on later, after he leaves her home. Midway through the training session, Bill uses the restroom, applies a heavy dose of cologne and returns. Dani is overpowered by the smell, becomes dizzy, stumbles on a piece of fitness equipment, and crashes to the floor, landing on her wrist and badly bruising her hip. Dani is angry and feels badly betrayed by Bill. Never one to like going to the doctor, Dani waits for a week before she finally has her wrist and hip checked out by a doctor. She learns that she has a severe compound fracture in her wrist, though her hip is fine. Because of the delay in going for treatment, Dani will need to have her wrist re-broken, have surgery to place pins in her bones, and may not be able to use that arm for 3 months. She would not have needed the surgery if she had been treated within 24 hours of the injury. Dani closes her personal training business for two months to mope and be resentful about Bill.

Dani sues Bill for lost earnings, medical expenses and pain and suffering. Which is she least likely to recover?

- (A) Medical expenses for treating a compound wrist fracture.
- (B) One month lost earnings, assuming that a compound fracture would prevent her from working for a month.
- (C) Pain and suffering for the injury to her hip.
- (D) Punitive damages because Bill acted with malice when he intended to make Dani miserable.

Explanation (optional)

Part II – Short Answer-30 points total- (suggested time 25 minutes)

Question 4 (30 points)

Ricardo is a lawyer who worked for the US Attorney General's Office in the Corporate Crime Division. Before he went to law school, Ricardo worked as a licensed Certified Public Accountant for 8 years. For over 5 years after he graduated, Ricardo successfully prosecuted top corporations' senior management. Like many government attorneys, Ricardo periodically thought about switching from public service to private practice, and voiced those thoughts to his family and friends. He enjoyed his government job, but also found it stressful. "When the kids are in college and we need the money," he told his wife, he'd work in the private sector and earn double his salary. When Ricardo's 2 children were 9 and 11, Ricardo's wife, Nan, landed a very lucrative cable network position, requiring her to work long hours and travel internationally. Ricardo decided to take a 6 month leave of absence to explore being the "stay-home parent". During that time, he took care of almost all household chores and chauffeured his 2 children around to their many activities. In his limited spare time, Ricardo enrolled in a creative writing course, took up golf, and exercised daily. He so enjoyed his new life that he officially resigned from the US Attorney's Office. Ricardo went on to become a certified fitness instructor, published several short stories, and enjoyed his life with his family. Six years after he last practiced, Ricardo was instantly killed when a highly intoxicated driver jumped the median strip and hit Ricardo in a head-on collision. The driver had a previous record of driving while under the influence and had twice been convicted of that crime. The driver was unhurt and was covered by insurance.

Nan has sued the drunk driver on behalf of Ricardo's estate and her own injuries. Identify the possible specific kinds of damages Nan may seek to recover for the losses she incurred. For each kind of damages, explain why Nan would be entitled to recover them and how these damages could be calculated. (Not dollar amounts, but specific kinds of damages.)

Part III -- Essay –60 points total (suggested time 55 minutes)

Essay - Question 5:

Eduardo, a 30 year old administrative assistant, purchased a new one bedroom condominium on October 22, 2006. The design of this condominium complex was not unique: a year earlier the builder/seller (BS) had constructed a nearly identical set of condominiums on the other side of Concord, New Hampshire. Before closing, Eduardo was told by Tracy, one of BS's sales representatives, that the cost of heating the unit would be "inexpensive" or "as low as you can find for a unit this size in the area." More specifically, Tracy said that all the units were "well insulated" and provided literature on the unit's new hybrid electrical heating system. "A typical electrical bill for the winter," Tracy offered, "probably won't exceed \$55 for each of the three hottest months." Eduardo knew from his own former experience that the electricity used by everything other than heating and air conditioning averaged about \$28 per month. Tracy told Eduardo, before he purchased his condominium, that BS planned to install a privacy wall around the back and sides of the complex later that winter. The area around the wall, Tracy added, would be landscaped and include plantings of trees and shrubs, further contributing to providing privacy and protection from the wind. One side of the unit Eduardo planned to buy was near the proposed wall.

Over the next few months, BS decided not to install the privacy wall or landscape the space, as costs for construction and landscaping labor and materials had skyrocketed due to all the building in the area. When Eduardo's December electrical bill came, he was shocked. Although his thermostat was set no higher than 68 degrees, the monthly bill was more than \$200, and the coldest part of the winter still hadn't arrived. Eduardo had not entirely believed Tracy's statements about energy efficiency, but his December electrical bill was far more expensive than he had expected or budgeted for. Very concerned, Eduardo talked to his neighbors in the complex, and learned that their electrical bills for the previous winter, the first year the complex was open, were always in the high \$90s to \$100s.

Eduardo then called the electric company and asked them to check his condo. One of the electric company's representative's took infrared "pictures" of the exterior to see any temperature differences. The pictures showed that one 50-foot-long exterior wall, corresponding to Eduardo's bedroom and living room, had no insulation. Apparently, Eduardo's condo was the only one with this defect. The electric company representative explained that the only way to cure the problem would be to tear off the interior sheet rock and insert insulation, which would be a complex, dirty, and expensive process. Eduardo would need to live elsewhere during the 2-3 weeks it took for the condo to be renovated.

When the electric company representative checked Eduardo's condo further, she looked at the carpeting and suggested to Eduardo, that "he might want to have the carpet checked out." She pointed out that many of the new buildings she inspected for electrical problems also happened to have problems with their carpet installations. In particular, the carpeting in many newly-constructed buildings contained the known carcinogen p-Dichlorobenzene, which has been on the EPA's list of Extremely Hazardous Substances. This carcinogen has produced fetal abnormalities in some test animals, and has been known to cause hallucinations, nerve damage and respiratory illness in 10 % of the humans who have elevated concentrations of it in their blood. After following her advice, Eduardo learned that the carpeting in his condo did, in fact, have p-Dichlorobenzene. He is worried about the presence of the chemical in his blood, but has

not scheduled to have his blood tested for the chemical. He has suffered no symptoms as of February 22, 2007.

You are in-house counsel for BS. Assume that Eduardo would be successful in a claim against BS for the tort of misrepresentation, and that the damages Eduardo could receive would be the same as those he could receive in a personal injury claim. You have been asked to provide guidance to BS of the company's potential exposure.

Using law, facts and policy, identify the kinds of damages Eduardo may claim. For each kind of damage, analyze how likely Eduardo is likely to recover for it, and why your client is likely to be liable for it.