

TORTS FINAL EXAMINATION

Professor Sophie Sparrow – Fall 2007

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

EXAM NO. _____

General Instructions

This exam is **11 pages long**. Make sure you have all of the pages. You have 180 minutes to complete the exam.

IF you use **bluebooks**, put your exam number on the front of each bluebook. Please write on only **one side** of each page of the bluebook. Please write on **every other line**.

IF you are typing your exam on a **laptop**, be sure to have your exam number on the document. Please use double-spaced lines, 12 point Times New Roman type.

This examination is worth **300** points out of 500 in the course.

Part I of the exam consists of 6 multiple-choice questions. Part I of the exam is worth **30 points**; each question is worth 5 points. Suggested time for Part I is 24 minutes (4 minutes per question). 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 the responses below the question**. 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 I must be completed on this exam. Everyone must write explanations below the question (not in bluebooks or typed on a laptop).

Explanations written in bluebooks or typed documents will not be considered.

Part II of the exam consists of an essay and two questions. It is worth **270 points**. Suggested time for Part II is 150 minutes (two and a half hours).

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 11 pages of this exam as well as all scrap paper used.

This is a **closed book** exam. You may talk to **NO ONE** about this exam until you are authorized to do so. [Not all students may be able to complete the exam on time, so do not discuss the exam after you have turned it in. Please wait until I have received and verified that I have all exams.]

Use **only** your assigned **Exam Number** for this exam. **Do not** use your name or Social Security Number anywhere. **Do not** provide any identifying information anywhere on the exam.

Providing any identifying information on or after the exam and before the exam is returned is a violation of the Pierce Law conduct code.

"Tips" for taking this examination:

- Read the "call of the question" and the specific instructions first. Determine the specific relevant legal issues before reading through the entire fact pattern.
- Read the questions carefully before beginning to write your response. The facts are critical to analyzing the questions asked.
- For an essay question, **map out or outline** your response. Often there will be multiple parts – elements, factors – that require you to address many different points. Having a sense of how many different points you need to address will help you allocate the time you spend on each.
- State any assumptions you make.
- Use **headings**. They make a big difference and will help you organize your thoughts. Headings by elements and factors are very helpful.

I will be looking for your ability to:

- Identify the legal issue(s) raised by the specific facts;
- **Confine** your analysis to the specific issue(s) raised, rather than discussing general tort law;
- Show your knowledge of legal principles and "rules;"
- Apply relevant legal principles and "rules" to factual situations; 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 can understand in your written responses; **EXPLICITLY show the steps in your reasoning.**

Best wishes for a successful end of semester. You can all be highly successful attorneys!

Part I – Multiple choice questions – 30 points (5 points each)

Question 1.

David and Patty are roommates who share an apartment. One night while David was out, Patty borrowed David's expensive suede leather jacket and wore it to a baseball game. While Patty was at the baseball game, an excited fan next to Patty splattered her with a hot dog coated in mustard, relish, onions and ketchup. The condiments oozed all over the suede leather jacket, and, despite Patty's best efforts at wiping the jacket clean with napkins, the condiment stains remained. When she returned to the apartment, Patty hung the jacket in David's closet. The following week David pulled out his suede jacket, saw that it was badly stained, and was furious. Patty was on a business trip out of town. David called Patty on the computer phone system they both had access to. This system allowed them to communicate verbally as well as see each other's faces on their computer screens. "You idiot!" yelled David to Patty. "I am going to bust your chops when you get back," accompanying his words with shaking his fist at Patty. Patty was scared by David's actions and wants to sue David for causing her fear. You represent David. Your most accurate advice to David would be:

- A. Patty has an assault claim against you because you gave her a specific definite threat and accompanied it with a physical gesture.
- B. Patty has a battery claim against you because you intended to and caused an offensive contact.
- C. Patty has a battery and assault claim against you for your actions.
- D. Patty has neither battery nor assault claims against you.

Explanation (optional)

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Question 2.

Paula worked at a steel refining plant. Her best friend from childhood, Neil, worked at the same plant. Darren, a client visiting the plant failed to look where he was going one day, and carelessly knocked over a container of machine parts. Some of these parts were round and rolled onto different areas of the plant's floor. Neil, who was operating a welding torch, stumbled when he stepped onto one of these machine parts. His welding torch, which blasted flames, flew out of his hands and landed near a cauldron of melting steel. The cauldron of melting steel ignited, setting the surrounding area on fire. Neil was engulfed in flames, and suffered severe burns. Many yards away, at the other end of the plant, Paula witnessed Darren's knocking over the container, Neil's slip and fall, and Neil being engulfed in flames. Neil survived the accident but was hospitalized for weeks for burn treatments. Paula was traumatized by witnessing Neil's accident. She had recurring nightmares and flashbacks about Neil being burned, became unable to enter the plant without suffering uncontrollable shaking, and had severe panic attacks whenever she saw a flame, even a small one like that from a cigarette lighter. Paula received treatment for her trauma, was unable to work, and had to take a disability leave from work. Paula has filed a complaint seeking to recover damages from Darren for her emotional and physical injuries. You represent Darren. Your best argument would be to:

- A. Move to dismiss Paula's claims because she was not a foreseeable plaintiff.
- B. Move to dismiss Paula's claims because she did not suffer sufficient physical or mental injury.
- C. Move to dismiss Paula's claims because she was Neil's close personal friend.
- D. Move to dismiss Paula's claims because she did not suffer a foreseeable injury

Explanation (optional)

can continue on opposite side

Question 3.

Paul entered an elevator on the ninth floor of an office building. The elevator went into “free fall”; after plummeting to the fifth floor it stopped and bounced violently on its cord. Paul was thrown to the floor and broke his ankle. He sued the Dotis Elevator Company in negligence. Dotis installed the elevator and had a contract with the building to maintain it. During trial, Paul did not produce any evidence of Dotis’s negligence. Dotis moved to dismiss Paul’s claim. As the judge, based on the facts here, your best decision would be to:

- A. Grant the motion to dismiss because Paul failed to show that Dotis’s lack of using reasonable care caused his ankle injury.
- B. Grant the motion to dismiss because Paul failed to show what specific actions or inactions of Dotis showed a lack of reasonable care.
- C. Deny the motion to dismiss because the elevator would not ordinarily have gone into a free fall unless someone failed to use reasonable care.
- D. Deny the motion to dismiss because the elevator’s free fall showed that it likely deviated from elevator product specifications, making it unreasonably dangerous.

Explanation (optional) *can continue on opposite side*

Question 4.

Dora, a therapist, has been treating Marvin for 5 years. Marvin is a diagnosed kleptomaniac (has a compulsive urge to steal). Marvin usually has control of his kleptomania, but when he is under stress, his urges to steal become stronger. Marvin is a very skilled thief; he never harms people when he steals. Marvin has recently learned that his long-term neighbor and friend, Polly, is about to be shipped a \$50,000 diamond ring from her grandmother. Polly would love to keep her grandmother's ring, but owes \$40,000 to the local hospital for necessary medical treatment she received. Polly plans to sell the ring so she can pay the medical bills. Polly has told Marvin that because there is such high risk of theft, she has been told she must be at home at a certain time to receive the ring from the shipping company. Marvin tells Dora that Polly's ring will be delivered on Monday, 12/17/07 at 10:00 a.m.; and he plans to steal it. He knows it is wrong, but he is under stress from the oncoming holidays and feels a strong compulsion to steal Polly's ring. Based on her five years of treating Marvin, Dora believes that he will steal Polly's ring, but not physically harm Polly. She has come to you for advice about what she is legally required to do. Your best advice to Dora would be to:

- A. Do nothing because a therapist generally has no duty to control a client's actions.
- B. Do nothing because therapists may not reveal confidential information about their clients.
- C. Warn Polly that Marvin may steal her ring because it is highly likely that Marvin will commit a serious crime against a specific third party.
- D. Inform local law enforcement officials about Marvin's likely theft because she has a duty to take reasonable efforts to protect Polly from a serious threat.

Explanation (optional)

can continue on opposite side

Question 5.

On Monday, Patrick's parents bought a window shade to install in Patrick's room. They left the window shade in the hallway outside Patrick's room and told him that they would install it that weekend. They also told him not to try to install it himself. Patrick, age 11, wanted to have the new shade installed immediately. He looked at the directions for installing the shade and figured he could do it himself. He had experience building things with his parents, and knew how to operate basic tools. On Thursday afternoon he decided he would go ahead and try to install the shade. Following the directions that came with the window shade, Patrick used the family's electric drill to drill holes in the ceiling above the window. This was a brand new Destinghouse cordless electric drill, made in 2007. Unfortunately, Patrick struck a piece of metal in the ceiling, which caused the electric drill to bounce back and jerk out of his hand. Even though Patrick released the button that activated the drill, the drill did not stop, but fell on his arm and cut him badly. Federal safety regulations require that all electric drills stop when the activating buttons are released. The Destinghouse electric drill was designed to stop when its activating button was released, but Patrick's family's model did not conform to Destinghouse specifications. Patrick seeks to sue Destinghouse for his injuries. You know you need many more facts, but based on the preliminary facts above, as the family's lawyer, your best prediction is that:

- A. Patrick will likely recover all his damages from Destinghouse because Destinghouse's electrical drill failed to conform with federal safety regulations.
- B. Patrick will likely recover all his damages from Destinghouse because Destinghouse's electrical drill failed to conform to Destinghouse's specifications.
- C. Patrick will likely recover all of his damages from Destinghouse if he can prove that Destinghouse was negligent when it manufactured this particular drill.
- D. Patrick will likely recover all of his damages from Destinghouse if he can prove that Destinghouse's lack of adequate warnings made the drill not reasonably safe.

Explanation (optional)

can continue on opposite side

Question 6.

Patricia heard that the Dagwood Convention Center was hosting the annual convention on “Innovation Technology for Water Conservation.” Patricia, who owned a water conservation business, did not want to pay the \$450 entrance fee for the convention but wanted to learn about her competitors’ products. Accordingly, she dressed up as a Dagwood Convention Center employee and, carrying a tray with containers of bottled water, walked into the room where the convention was being held. While she was walking around the convention room she stumbled and fell when she tripped on an extension cord that was lying on the floor of the convention center. A Dagwood Convention Center employee had carelessly forgotten to tape the cord; the custom at all convention centers was to tape all extension cords to the floor. The employee’s negligent placement of the extension cord caused Patricia to fall, resulting in Patricia tearing two ligaments in her knee. Patricia suffered severe pain and incurred significant medical expenses and loss of income. She has asked you, her lawyer, whether she is likely to successfully sue Dagwood Convention Center in negligence for causing her injuries. Your most accurate advice to Patricia would be that:

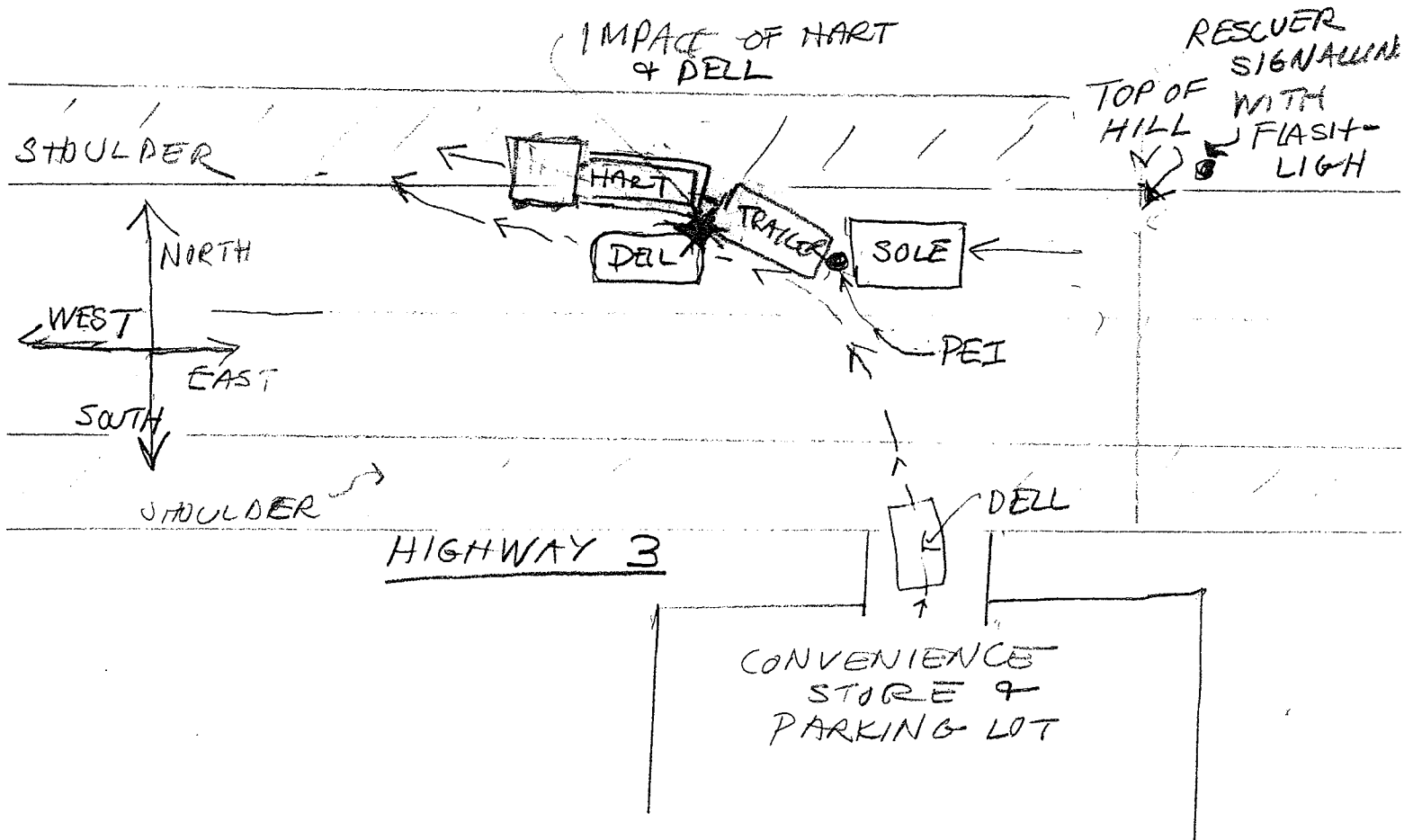
- A. Patricia will not likely recover damages unless the employee’s failure to tape was done in part to serve the Dagwood Convention Center.
- B. Patricia will not likely recover damages unless she can prove that she had permission to be at the conference.
- C. Patricia will likely recover damages because Dagwood’s employee failed to follow custom, showing that its employee was negligent.
- D. Patricia will likely recover damages because a loose extension cord lying on Dagwood’s convention room presented a risk of serious injury.

Explanation (optional)

can continue on opposite side

Part II – 2 Essay Questions – these refer to the drawing below.

- Assume that all parties in this fact scenario are adults of reasonable intelligence and without any physical or mental disabilities.
- Assume that the accidents described below are physically possible and happened as described.
- Recommended time: spend 30 minutes organizing and outlining
- Spend about 50 minutes writing the answer to Question 7.
- Spend about 70 minutes writing the answer to Question 8.



Highway 3 is a two lane undivided highway running east and west. A convenience store is located on the south side of the highway, just to the east of and near the top of a slight hill from which the highway slopes gradually in both directions. After purchasing several items at the store, Anna Dell drove her car northwest across the highway with the goal of driving west on Highway 3 to her home.

Dell had just started to play a new music CD she bought, turning up the volume as loudly as she could tolerate, and was glancing at the notes on the CD case. She did not look to her right (to the east) to see if any headlights were coming up over the slight hill as she pulled onto the highway going west (to the left). Focused on the loud music playing from the CD, she also did not hear a honking horn coming from her right. She did not notice that as she pulled into the western-traveling lane that a truck was rapidly approaching, and did not increase her speed to prevent a collision.

At the time that Dell pulled onto Highway 3 from the convenience store, Bob Hart was traveling west along Highway 3. He was driving his pick-up truck and pulling an empty trailer, and traveling at the posted speed limit of 50 miles per hour. As he crested the hill just to the east of the convenience store, he saw Dell's car pull onto the highway in front of him. Hart immediately slammed on his brakes, honked his horn, and tried to swerve onto the shoulder of the highway to avoid hitting Dell. Hart was able to avoid hitting Dell's car with his truck, but the trailer swerved and struck the rear of Dell's car. This first collision occurred at about 6:00 p.m. in the north traffic lane of the highway. It was dark at the time and a light rain was falling.

The impact of the accident knocked Dell's car off the roadway. Hart's truck came to a stop on the shoulder of the highway, on the shoulder, but the trailer which he had been pulling turned over and stopped in the north traffic lane. Many people gathered after the accident. One of them went east to the top of the hill to signal westbound traffic with a flashlight. Others, including Juan Pei, tried to remove the trailer from the highway. About an hour after the first accident, at about 7:00 p.m., the only remaining problem was the damaged trailer in the west-bound lane. The rescuer who had been signaling westbound traffic with the flashlight remained doing so at the top of the hill. From 6:00 p.m. on, there had been a regular traffic, but cars in both directions had managed to stay out of the way of the trailer, slowing in response to the flashlight signals, and swerving or moving to the left of the trailer to avoid colliding with it.

After the accident Pei and others were still working on removing the trailer from the highway. Pei had no professional rescue training but had worked on road construction sites and had a lot of experience working with trailers. One of the first to arrive at the scene of the collision between Hart and Dell, he had been helping out at the accident site since arriving at the scene at around 6:10 p.m. Others who had arrived at the accident after Pei offered to step in his place, and warned him of the dangers involved in working on an accident scene on a highway. Pei said he knew a lot about accidents, was aware of the danger, and wanted to help out.

At 7:30 p.m. Pei was hit by a car driven by Tim Sole. Sole had been driving west on Highway 3 and either did not see or ignored the flashlight signaling him to drive with care. According to the police report filed afterwards, Sole admitted that he had been drinking. A broken whiskey bottle was found in Sole's vehicle and two other bottles with their seals unbroken were found in the field across the fence on the north side of the highway. The two bottles were returned to and accepted by Sole. He was charged with

aggravated driving under the influence as his blood alcohol concentration was almost three times as high as the allowed limit.

Pei was badly injured from being hit by Sole. He fractured both legs, shattered his pelvis, and suffered an injury to his spinal column. Doctors treating Pei have tentatively given him a prognosis that he will regain the ability to walk, but his body has suffered such severe injuries that he might be confined to a wheelchair for the rest of his life. Pei has asked you, his lawyer, to represent him to recover damages for his injuries. You have learned that Sole has no assets, low income, and an insurance policy that will cover only about 5% of Pei's projected damages.

You are currently considering bringing a claim in negligence against Dell for Pei's injuries.

Question 7 (120 points): Identify and analyze Pei's best claim of negligence against Dell for the remaining 95% of Pei's injuries. (Do not consider the weaknesses of Pei's claim in this question.)

Question 8 (150 points): Identify and analyze the strongest arguments Dell will make in defending Pei's claim for negligence. In doing so, identify the relative strengths of Dell's arguments.

In answering questions 7 and 8, use law, facts and policy. Policy arguments do not need to be made for each element. Instead, apply policy to the overall analysis or to one of the more ambiguous elements.

You do **not need to discuss** the specific damages Pei incurred or how to prove them.

Thank you for a terrific semester.

You have made my first experience teaching Torts to Pierce Law students truly wonderful!