

## **TORTS FINAL EXAMINATION**

Professor Sophie Sparrow – Fall 2009

### **General Instructions**

This is an open-book take-home exam.

#### **Exam number identification only:**

1. Use **only** your assigned **Exam Number** for this exam.
2. **Do not** use your name or Social Security Number anywhere.
3. **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.**

#### **Typeface, font and format for questions:**

1. All parts of this exam must be typed.
2. Put your exam number in the header of your exam document – on the right-hand side. This ensures that your exam number is on each page.
3. Use 12 point Times New Roman font.
4. Double-space lines throughout.
5. Use 1" margins all around.
6. Include page numbers on the bottom of each page.
7. Observe page and word limits. Nothing over the page or word limit will be read or will count.

This examination is worth **36% of your grade** in the course.

### **PART I**

**Part I** of the exam consists of 10 multiple-choice questions. Part I of the exam is worth **30 points**; each question is worth 3 points. Facts from or answers to previous questions do not apply to subsequent questions unless indicated.

For each **multiple-choice question**, write the number of the question, followed by the letter that corresponds to the best answer. Select only one letter for each question. Be sure to label the numbers of the questions – random letters on the page don't count.

#### **Example:**

1. A
2. C

You may explain your answers by **writing the responses below the answer**. You **do not** need to explain any answer to a multiple-choice question.

If you choose to write an explanation, you will not lose any 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.

If you write an explanation, you must limit it to a maximum of 150 words.

To be considered, all Part I answers and optional explanations must be typed in your exam document. All selected answers and optional explanations must be labeled clearly.

## PART II

Part II of the exam consists of a fact pattern followed by 3 short questions and one essay question. It is worth 70 points. All questions relate to one fact pattern.

Question 11 (5 points) maximum 150 words.

Question 12 (15 points) maximum: the answer must be 250 words or less AND 1 page or less.

Question 13 (15 points) maximum: the answer must be 250 words or less AND 1 page or less.

Question 14 (35 points) maximum: the answer must be 1250 words or less AND 5 pages or less.

### For BOTH PARTS I and II:

- Assume all events, conditions, and facts are physically possible and happened as described.
- Assume all people in the scenarios are adults of reasonable intelligence and without any physical or mental disabilities unless otherwise noted.
- Assume all people are of average height, weight, strength and coordination.
- All scenarios take place in jurisdictions that apply pure comparative fault.
- All scenarios take place in jurisdictions that have a state rule of civil procedure analogous to Fed. Rule of Civ. Pro. Rule 11, providing sanctions for frivolous claims.
- State any assumptions you make.
- Make and state reasonable inferences.
- For Question 14, use **headings** as they will help you organize your thoughts. Use separate headings by elements and other pieces of analysis.
- **Organize the analysis according to element.** Failure to do so will lose points. For example, if you note how a person breached the duty of care, but include this information under a different element, it will lose points.

### When you are taking the exam and after the exam:

- I will not answer any questions during the exam. If something is unclear, identify it and make and name any assumptions to make to resolve the lack of clarity.

## Torts F 09 Sparrow - Final 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.
- **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.

### I will be looking for your ability to:

- Identify the legal issue(s) raised by the specific facts;
- Identify which issues are in dispute and which are unambiguous;
- **Confine** your analysis to the specific issue(s) raised, rather than discussing general 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.
- You know a lot about torts. 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.**

In answering the questions, use law, facts and policy. For Question 14, 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.

Scoring torts essays is similar to scoring on the team assessments and essays from previous years. Identifying legal issues and applying specific facts to legal principles – showing the analysis to the reader – is most important. About 5% of the grade is on policy. Around 10% of the grade will be based on writing and organization. Because of the word/page limits, focus your analysis on the areas with the greatest ambiguity.

**Best wishes for a successful end of semester and wonderful break.**

**I believe each of you can be a highly successful attorney!**

**Thanks for being a terrific class!**



**Part I Multiple-Choice Questions (30 points; 3 each) Choose the BEST answer.**

**Question 1.** Will, an international wildlife photographer, brought home a hedgehog from an assignment in Eastern Europe. He kept the cute but very prickly hedgehog in a crate at night, and had never had a previous problem with the hedgehog escaping. Will's niece Ella was visiting one night when the hedgehog managed to wiggle out of the crate and wander onto the couch, where it curled up into a little ball and fell asleep. Not noticing it, Ella later sat on the hedgehog, requiring her to have surgery to remove multiple sharp hedgehog needles. **Is Will likely liable for Ella's damages?**

- A. No, because Will had no notice that the hedgehog could escape.
- B. No, because Will used reasonable care in crating the hedgehog.
- C. Yes, because hedgehogs are not traditional domestic pets.
- D. Yes, because Will should have known the hedgehog could escape.

**Question 2.** To provide a healthy and inexpensive supply of meat, Alma decided to raise pigs. She bought eight piglets and kept them fenced in her back yard. As the pigs grew, noxious smells emanated from the back yard. These smells disturbed her next door neighbor Mitt, who complained to Alma that the smells prevented him from enjoying his favorite hobby, raising heirloom roses. **If she keeps raising pigs, what claim can Mitt bring against Alma?**

- A. Nuisance only.
- B. Trespass only.
- C. Neither nuisance or trespass.
- D. Nuisance and trespass.

**Question 3.** Ford, an experienced attorney, applies for a lateral position at another legal organization. His prospective employers call one of Ford's references, Tina, who tells them that Ford may be under investigation for ethical violations. Tina had received an official letter from the bar association's investigatory board explaining Ford's potential violation. Ford's prospective employers decline to offer him a position, explaining what they heard from Tina. Ford has informed Tina that he plans to sue her for damage to his reputation. **Is Tina likely liable to Ford?**

- A. No, because she received the information from the investigatory board.
- B. No, because Tina's statements were not made to the public.
- C. Yes, because Tina communicated a harmful statement to a third party.
- D. Yes, because Tina slandered Ford when she spoke to his prospective employers.

**Question 4.** Val, a professional and world-class golfer, wanted to undermine her main competitor, Chloe. At midnight on the night before a tournament, Val called Chloe, waking her from a deep sleep. Pretending she was a police officer, Val told Chloe that her parents had just been attacked by a burglar in their home, were shot at gunpoint, and were in the hospital's Intensive Care Unit. Val also said that Chloe's parents were unlikely to survive. Val knew that Chloe, an only child, and her parents were exceptionally close, and that Chloe would be extremely upset. That night Chloe suffered a panic attack. Even though Chloe learned the next day that the call had been a hoax, she continued to suffer regular panic attacks, loss of sleep, nightmares and extreme anxiety about losing her parents. **Is Val likely liable to Chloe?**

- A. Yes, if Chloe had physical manifestations of distress.
- B. Yes, if a jury determined that Val's conduct was outrageous.
- C. No, because Val used words and not actions to harm Chloe.
- D. No, because Chloe should have immediately suspected that the call was fake.

**Question 5.** Martin, age 15 and a rising actor, contracted with Movie Studio to star in five features over the next four years. Movie Studio's executives pressured Martin to sign the contract quickly and without having a lawyer present, and did not disclose to Martin that the contract Martin signed contained provisions that violated child labor laws. Movie Studio executives also told Martin that if he did not sign the contract, they would tell all their colleagues in the industry that Martin was "difficult to work with," which would ruin or severely hamper Martin's future career as an actor. India, the owner of Indie Films, who disliked Movie Studio's crass mass-market features, met Martin at a party. India thought Martin had great potential and invited him to break his contract with Movie Studio and make a series of art films with her company. Martin accepted. **Is Movie Studio likely to succeed in suing India for the income it will lose from not having Martin star in its features?**

- A. Yes, because India knew that Martin had agreed to star in Movie Studio's features.
- B. Yes, because India disliked and intended to harm Movie Studio.
- C. No, because Martin voluntarily chose to work with India instead of Movie Studio.
- D. No, because of the circumstances and terms of Martin's contract with Movie Studio.

**Question 6.** Phyllis, a physical therapist, is severely allergic to all perfumes. All her clients know about her condition and they know to remove any scented products before they work with her. Carter, a long-term client of Phyllis's, was angry that he was not healing faster and decided to douse himself with very strongly scented aftershave to annoy Phyllis. Upon arriving at Phyllis's clinic, Carter's scent wafted all over the premises and caused Phyllis to experience a severe anaphylactic shock, requiring medical treatment. **What damages could Phyllis recover from Carter?**

- A. Compensatory and punitive damages for assault and battery.
- B. Compensatory, nominal and punitive damages for battery and intentional interference with contractual relations.
- C. Compensatory and punitive damages for battery.
- D. No damages because Carter intended to annoy not harm Phyllis.

**Question 7.** Henry worked very hard to save enough money to make a down payment for his first home. Seeing a small home he really liked, Henry sought more information from the homeowner's experienced real estate agent, Sunniva. Knowing that the information was very likely incorrect, but wanting to make a sale and earn her commission, Sunniva gave Henry statements about the home's operating costs, such as property taxes and average utility costs. After he bought and moved into the home, Henry learned that the utility costs were six times as expensive as Sunniva had informed him, and were unaffordable on his salary. **If true, which of the following facts would most help Henry prove the appropriate cause of action?**

- A. Henry suffered an unreasonable interference with the use or enjoyment of his new home.
- B. Henry intended to take possession of the home under any circumstances.
- C. Sunniva intended to interfere with Henry's ability to earn a profit from later selling his home.
- D. Sunniva knew that Henry would consider the operating costs important.

**Question 8 and 9 apply to the following facts.** Ruby has a new laptop computer made by Lill Co. Lill Co.'s laptops are designed to and do contain an innovative state-of-the-art battery, which lasts twice as long as other batteries on the market. When dropped from a height of 3 feet (1 meter) the outer casing of all of these long-lasting batteries can break, leaking highly flammable material. While friends were at her home for a dinner party, Ruby opened up her laptop to show a video clip. Crowding around the dining table, which was adorned with many lit candles, one of Ruby's friends unintentionally bumped Ruby's laptop, causing it to fall to the ground, and crack the battery. Returning the dropped laptop to the table, it suddenly erupted in flames, burning people and property.

**8. If true, which of the following facts would most help Ruby prove the appropriate cause of action against Lill Co.?**

- A. Lill Co. violated workplace safety violations in assembling Ruby's laptop computer.
- B. Another long-lasting but more expensive battery is in early stages of development.
- C. While many people like them, few people need longer-lasting batteries.
- D. People using laptops reasonably expect them to be safe around lit candles.

**9. If true, which of the following facts would most help Lill Co. defend against Ruby's appropriate cause of action?**

- A. Federal safety regulations expressly state that the batteries in Lill's laptop are safe for consumers.
- B. Ruby failed to closely read the warnings that the laptop's battery could cause fire if dropped.
- C. Lill Co.'s laptops are marketed and designed for people who work in remote areas without electricity.
- D. All of the above.

**Question 10**

While on vacation, Noah signed up and paid for a recreational ride in a hot air balloon with Soaring Adventures. Before he went on the ride Noah viewed Soaring Adventures' video about hot air balloon rides. The video showed safety procedures and informed him of the potential risks. After watching the video, Noah read and signed a waiver, releasing Soaring Adventures of liability for any injuries he incurred while on the hot air balloon ride. While in the air, a rare large bird, a red macaw, flew into the hot air balloon and punctured it. The balloon lost elevation and crashed down onto a field below, breaking Noah's back. Camelia, a retired naturalist, had raised the red macaw since it was a chick, and kept it on her premises by periodically clipping its wings. Camelia did not know that the macaw's wings had grown out, allowing it to fly. **Would Noah likely recover damages from Camelia?**

- A. Yes, because Camelia had been keeping the macaw.
- B. Yes, because Camelia should have anticipated that the macaw would attack the balloon.
- C. No, because Camelia did not know that the macaw's wings had grown out.
- D. No, because he signed a waiver and expressly assumed the risk of harm.

**Part II – Written Answers and Essay**

**Assignment:** You are a new attorney working for a law firm that is representing Pita, and have been asked to help assess the strengths of her claims.

**Location:** All events took place in the residential neighborhood in the fictional city of Arundel, in the fictional state of Franklin on December 11, 2009.

**Weather conditions:** On December 11, 2009, the temperature ranged from 20-30° F (-6 to -1° C). The sun rose at 7:10 a.m. and set at 4:30 p.m. The winds were blowing at about 20 miles (32 kilometers) per hour.

**Laws:** Franklin is a pure comparative fault jurisdiction. Franklin is also a negligence per se jurisdiction. All laws listed below are current.

**Facts:**

Bee, age 27, is permanently disabled and cannot earn a living. She has a complex mental illness which makes her suffer from paranoid delusions, hallucinate, and renders her incapable of living independently. Bee takes several medications for her illness, which prevent her from acting violently, but cause physical side effects. In particular, Bee's medication impedes her physical coordination, and can occasionally cause her muscles to spasm and her limbs to thrash out wildly, especially when she is under stress.

Bee lives with Don, her father and caregiver, in a residential neighborhood. Don, a highly successful professional photographer, has legal authority to make decisions for her and provides for her care, or, when he is unavailable, has others come to care for Bee. Because Bee cannot work, she has no income. Don pays for the majority of her expenses, and Bee receives federal permanent disability benefits, a few hundred dollars a month. Under federal law, Bee's federal disability benefits can only be used for her essential needs of food, clothing, and shelter.

Don encourages Bee to get exercise and takes her for walks with him at least four times a week. They usually walk a three-mile circular route around their residential neighborhood, which takes them about 50 minutes. The neighborhood is full of tall trees, old homes and, in the spring and summer, beautiful gardens. Because of its attractiveness, the neighborhood's three-mile circular route is a popular walk and run for neighborhood residents and other city dwellers who travel there to exercise.

Don and Bee were walking their usual three-mile route around the neighborhood, leaving their home at 4:00 p.m. Ten inches of snow had fallen the day before. The City of Arundel (City) had plowed the streets, leaving snow banks on both sides. The pavement on the streets was clear and dry on December 11, but the City had not yet cleared all the sidewalks, and some that had been cleared were slippery with packed and icy snow. Like most pedestrians and runners in the City, Don and Bee walked on the side of the street rather than on the slippery and snow-covered sidewalks. They were both wearing dark clothes, including dark hats and gloves. Their walking shoes had reflective patches that would pick up light from passing cars. Neither wore or carried a flashlight or other light.

Pita was also exercising in the neighborhood that afternoon. Pita is a freelance writer who works from her home and lives with her partner and their two children ages 2 and 4. Pita had recently moved to the City, did not live in Don and Bee's neighborhood, and had learned about the popular three-mile circular route the day before. Healthy and in good shape, Pita was running along the circular route for the first time. On top of her running clothes she wore a safety vest, which had large pieces of reflective tape on the front and back. She did not wear or carry any light.

The same day Wally was exercising some dogs along the circular route. Wally was wearing a dark winter jacket, tennis shoes, a dark hat and gloves. He did not wear or carry a light and did not wear anything which reflected light. Wally works from 9:00 a.m. until 5:00 p.m. for Dog Star Care (Dog Star). As of December 11, Wally, a high school graduate, had worked for Dog Star for four weeks. One of his daily assignments was to walk some of the larger dogs. Before he joined the work force at Dog Star, Wally had worked as an automobile mechanic for five years.

Dog Star is a private company that provides grooming, kenneling, and pet care services. Dog Star is located just beyond Don and Bee's neighborhood, and typically provides care for 50-60 dogs a day. Dog Star provides different kinds of care depending on the requests of dog owners and the temperaments of their dogs. Dog Star's policy is to observe each new dog upon its initial visit to Dog Star to assess the dog's level of training and identify any behavioral issues. Dog Star also has each dog owner complete a questionnaire about the owner's dog, but primarily relies on its own assessment of the dog.

Half-way through their walk, at about 4:25 p.m., Don and Bee were walking in the street, on the right hand side when they walked by a home with an 8 foot (2.4 meter) high inflatable plastic and brightly lit snowman in the front yard. Don and Bee had walked the circular route the day before and saw that the snowman had arrived that day. The home, owned by the Cowans, was on Don and Bee's right hand side. The Cowans had not sufficiently tied down the inflated large snowman, and it was jerking around in the wind.

While Don and Bee were walking past the Cowans' home, Wally was passing them moving in the opposite direction. Wally was walking on the sidewalk to Don and Bee's right, holding the leashes of four large dogs. Each dog weighed over 100 lbs. (45.5 kg). As a gust of wind hit the

inflated snowman, it suddenly lurched toward Wally and the dogs. Startled, one of the dogs jerked Wally, who slipped on the icy sidewalk and lost the grip on the dog's leash. The dog then jumped over the snow bank, and ran towards Bee, dragging its leash behind it.

Bee, who was scared of dogs, started yelling, flailing her arms, and clumsily moved away from the dog into the street. As Bee did so, she stepped in front of Pita, who was running along the right side of the street. Pita swerved to her left to avoid running into Bee. In doing so, Pita stepped on the dog's leash, which jerked her foot, making her lose her balance and fall on the pavement. When she fell, Pita broke her right elbow and hit her head on the pavement, suffering a concussion. Pita had to be taken to the emergency room. She received medical care and released later the same day. Pita's treating physician informed her that will have some pain for the next few days, will need to wear a cast on her right arm for 6 weeks, and can expect reduced mobility for 12 weeks. She will likely need physical therapy but her prognosis is that she is likely to fully recover.

**Franklin has the following statutes:**

**FR Stat. Ann. § 459-A** is titled "Department of Safety: Motorized Vehicles." The introduction states that the statute is designed to promote public safety and prevent injuries occurring as a result of accidents involving motorized vehicles.

**FR Stat. Ann. § 459-A:62(4)**: "Where sidewalks are provided, pedestrians must walk on the sidewalk. Where sidewalks are not provided pedestrians must, when practicable, walk either on the left shoulder or the edge of the left side of the roadway facing oncoming traffic. A pedestrian's failure to exercise either of those options constitutes a misdemeanor crime, punishable by a fine and up to one year in jail."

**FR Stat. Ann. § 700** is titled "Environmental Safety and Health." Within that chapter, **§ 727** is identified as "Light Pollution." The purpose of **§ 727** is to "promote the visibility and enjoyment of the night sky."

**FR Stat. Ann. § 727:13(B)** requires that "all residential outdoor light fixtures, including artificial illuminating devices, lamps and other devices, permanent or portable, used for illumination ... must be fully or partially shielded so that light rays emitted by the fixture, either directly from the lamp or indirectly from the fixture, are projected below a horizontal plane running through the lowest point on the fixture where light is emitted."

**Arundel City has the following rule and ordinances:**

In its "Rules and Definitions" the Arundel City Code includes the following:

**"Owner:** any person owning, feeding, keeping, maintaining or harboring a dog. Harboring shall include knowingly allowing a dog to remain on the owner's premises."

**"Running at Large:** not under the direct physical control of the owner or handler by leash, cord, chain or similar direct physical control."

**Arundel City Ordinance 3-3-2** states: "Every owner of a dog and any person having charge, care, custody or control of any dog shall restrain such dog from running at large."

**Question 11 (5 points) maximum of 150 words.**

Assuming she is successful in suing one or more parties, identify the basic kinds of damages Pita would likely receive, specifying whether they are general or special, and how Pita would prove them.

**Question 12 (15 points) maximum: the answer must be 250 words or less AND 1 page or less.**

To help prepare Pita's case, identify all parties Pita could reasonably sue in negligence or vicarious liability. For each potential party,

- A. Identify the name of the party.
- B. Identify the party's action/s showing a breach of the duty of care (do not address standard of care or other elements)
- C. Identify one major weakness in Pita's claim against the party. Here, identify either the element that would be most difficult for Pita to satisfy or other defense the party could raise. Only the first weakness listed will be considered.

For example: [Party Name] Failure to ..... **Weakness:** .....

**Question 13 (15 points) maximum: the answer must be 250 words or less AND 1 page or less.**

Of the parties in question 12,

- A. Identify the two parties against whom Pita likely has the strongest arguments.
- B. Explain why Pita has the strongest arguments against those two parties instead of the other parties named in question 12.
- C. Assuming she would be successful in her claim/s, identify from which of these two parties Pita would be most likely to recover damages.

**Question 14 (35 points) maximum: the answer must be 1250 words or less AND 5 pages or less.**

- A. Of the two parties identified in question 13, make Pita's best argument **against the party** from whom she is most likely to successfully obtain damages, applying the elements of negligence and/or vicarious liability to specific facts.
- B. **Do not itemize the damages** Pita could receive in answering this question.
- C. Within your answer, **identify the one biggest weakness** in Pita being successful in her claim. (Limit this to about one paragraph.)