

TORTS FINAL EXAMINATION

Professor Sophie Sparrow – Fall 2010

General Instructions

- This is a **closed-book in-class exam**.
- This examination is worth **25% of your grade** in the course.
- You must pass this exam to pass the course.
- **You may bring one sheet of paper** - 8¹/₂ x 11" - with information on both sides. This is the only material you may bring with you to look at during the exam.
- **Identification:**
 - 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 UNH School of Law Conduct Code.
- **If you use bluebooks and handwrite your answer:**
 - 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 type your exam on a laptop:**
 - 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.
 - Include page numbers on the bottom of each page.
 - Observe word limits. Nothing over the word limit will be read or will be scored.
- This exam consists of **a fact pattern followed by 4 questions**, all relating to that fact pattern.
- **Timing:** You will have 180 minutes to complete the exam. Please track your time to allow you to answer each question. Suggested times:
Read the questions and the fact pattern closely and carefully. Read every word. Assume that everything in the fact pattern is there for a reason. **Read** through the question and fact pattern again, underlining and/or taking notes. **~20 mins**
Break down the remaining times according to the question:
Question 1: 15 points -maximum 300 words **~5 mins** organizing **~21 mins** writing
Question 2: 15 points -maximum 300 words **~5 mins** organizing **~21 mins** writing
Question 3: 50 points -maximum 1000 words **~17 mins** organizing **~63 mins** writing
Question 4: 20 points -maximum 400 words **~7 mins** organizing **~25 mins** writing
Proof read/spell check/review directions ~5 mins

FACTS information:

- **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.
- **State any assumptions you make.**
- **Make and state reasonable inferences.**
- Use **headings** as they will help you organize your thoughts. Use separate headings by elements and other pieces of analysis.
- **Organize the analysis by element.** E.g., if you show how a person breached the duty of care, but include this information under causation, **you will lose points.**

Exam Taking Process — 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 you make to resolve the lack of clarity.
- 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.

On this exam 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 and facts.**
- **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.
- Around 10% of the grade will be based on following directions, writing, and organization.
- Because of the word limits, focus your analysis on the areas with the greatest ambiguity.

FACT PATTERN

Overview of incidents involving injuries

In May, Daniel Mayer (Dan), age 28, shot and seriously wounded Franklin City Police Officer May Woo (Woo) of the Franklin Police Department. Dan had taken the handgun with which he shot Officer Woo from the home of Sheila Kirk (Sheila), where his father, Will Mayer (Will), and Sheila lived. After Woo was shot, she was taken to the Franklin City Hospital and treated for bullet wounds in her left thigh, right shoulder, and neck. Woo was treated with narcotic painkillers, to which she later developed an addiction.

Additional facts

Sixteen years earlier, Sheila became the only owner of a single-family home. That year, Sheila's boyfriend, Will, moved in with her. Will was a hunter and owned 30 guns. He had a license for each of these guns. Sheila agreed that Will could store the guns in her basement in a gun cabinet. Within a few months of moving in, Will built a gun cabinet from wood and secured it with a padlock and hasp. **(See below for pictures of hasps.)** The hasp had exposed screws, observable by anyone who inspected the cabinet, which allowed someone without a key to the lock to remove the hasp and gain access to the guns.



Each of these two photos show a picture of a hasp - the piece of metal attached to the door - with a padlock. Both hasps have exposed screws as did Will's cabinet.



This is a picture of a hasp where the screws are covered. The screws on this hasp could not be easily removed, making the padlock more secure than the ones above. This metal hasp is only slightly more expensive than hasps with exposed screws.

During the 16 years between the cabinet's construction and when Officer Woo was shot, Sheila had occasionally seen the finished and locked gun cabinet, and had occasionally been in the basement while Will built the gun cabinet. The gun cabinet was the only way to secure the guns in Sheila's home. Sheila's home was not equipped with a burglar alarm and the door from the inside of her house to the basement did not have a locking device.

Sheila took no responsibility for constructing, maintaining, or securing the gun cabinet. She never handled the guns or accompanied Will on hunting or target-shooting outings and wanted as little as possible to do with the guns and the gun cabinet. She knew little about guns other than that

they were deadly and dangerous. She did not know where the key to the gun cabinet was, and she told Will that she did not want to know about the key's location. She did not know if there was more than one key.

Will's son, Dan, lived in Sheila's home at different times during the 16 years between when she bought her home and when Dan shot Officer Woo. Dan was not living at Sheila's home at the time of the shooting, but Will and Sheila had given Dan a key to Sheila's home, and allowed him full access to the home, even when they were absent. Dan would often come to the house regardless of whether Sheila or Will was home. Neither Sheila nor Will had given Dan permission to take a gun from the collection.

Sheila and Will knew that Dan had a history of violence and mental instability. They knew that (1) Dan had been arrested for assaulting a college professor and that this had led to his psychiatric institutionalization for a ten-day observation period as well as subsequent counseling; (2) Dan had been arrested for assaulting a former girlfriend and that this had led to a prison sentence; (3) Dan was involved in a third altercation, which required him to report to court for a hearing on a possible probation violation in May, 2009; and (4) Dan had gone absent without leave from the United States Army, and was subsequently discharged. In addition, Sheila knew that Dan had experience with guns (from his service in the Army), had expressed interest in obtaining a gun license, and had often been to Sheila's basement, where his father Will's collection was stored.

Dan had been receiving mental health counseling since 2000. During that time he met with the same counselor (the counselor). He had received counseling for 9 months, but had stopped going to his appointments even though his counselor had recommended that he continue treatment. He occasionally contacted the counselor and had last met with the counselor a month before he shot Officer Woo. During that session, Dan said that he was sick of the Army, hated law enforcement officials, and wanted to shoot anyone who got in his way.

Because Dan did not appear for his May 2009 probation violation hearing, a criminal warrant was issued for his arrest. On the night of May 10, 2009, Officer Woo, working alone, saw Dan (whom she did not know), dressed in military camouflage, walking on a dark and isolated country road. After Officer Woo did a "pat down" — she touched Dan's outer garments to see if he had a weapon — revealed a hunting knife, but no gun, she ran a warrant check. Before the check was complete, Dan fled. During the foot chase that followed, Dan shot Officer Woo three times.

Police officers later recovered the gun from the scene. Will later acknowledged the gun his son Dan used came from Will's collection and that it had been taken from Will's gun cabinet, which was in Sheila's basement. After Dan shot Officer Woo, Will showed Sheila that the screws in the gun cabinet's hasp were incorrectly positioned, and realized that Dan had gotten access to the guns in the cabinet by unscrewing the screws and removing the hasp, later replacing the screws to cover up the theft.

After she was shot, Officer Woo (32 years old) was in the hospital for 5 days. When she was released, her treating physician (the physician) prescribed narcotic pain relief medication (narcotics). The physician did not ask for Woo's medication history when the physician prescribed the narcotics. If the physician had asked, she would have learned that Woo had a history of being treated for drug addiction, and was at risk for becoming addicted to narcotics.

Four months after she was shot, Woo had completely physically recovered from her bullet wounds and returned to full-time police duty. Before she returned to police duty, she had received physical therapy. When Officer Woo returned to police duty, Woo, single and living alone, was still taking narcotics daily. She bought narcotics illegally on the street, and steadily increased the amount she took. A month after she returned to full-time police duty, while on the job and under the influence of narcotics, Woo made a serious error and was subsequently fired from her job. A year after she was shot, Woo was without a job and was completely disabled because of her addition to narcotics.

APPLICABLE LAW

All events are governed by the common law of the fictitious state of Franklin.

Franklin is a pure comparative fault jurisdiction.

Franklin has a state rule of civil procedure analogous to Fed. Rule of Civ. Pro. Rule 11, **providing sanctions for frivolous claims.**

Franklin has sovereign immunity statutes that permit Franklin City hospitals and employees to be sued for injuries they contributed to causing.

Franklin allows police officers to recover damages from other parties when they have been hurt while on duty. Franklin City police officers cannot sue the Franklin City Police Department in negligence.

Franklin follows general rules about negligence.

Franklin is also a negligence per se jurisdiction. All law/s listed below are current.

FR Stat. Ann. § 140 (g) states:

It shall be unlawful for any owner of a firearm to store or keep any firearm ... in any place unless such weapon is secured in a locked container or equipped with a tamper-resistant mechanical lock or other safety device, properly engaged so as to render such weapon inoperable by any person other than the owner or other lawfully authorized user.

Franklin courts have previously noted that the purpose of §140 (g) is “to prevent the temptation and the ability to use firearms to inflict harm, be it negligently or intentionally, on another or on oneself, and ... to limit access to deadly weapons by irresponsible persons.”

FR Stat. Ann. § 140-A states: “A firearm...includes a gun”

FR Stat. Ann. § 200 (a) states: “It is unlawful to own... or carry a firearm without a license”

YOUR JOB

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

Question 1 (15 points) maximum of 300 words. ~5 minutes organizing ~21 minutes writing

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

Question 2 (15 points) maximum of 300 words. ~5 mins organizing ~21 mins writing

To help prepare Woo's case, identify **the two main parties —other than Sheila Kirk and Dan Mayer** —who Woo could **reasonably** sue in **negligence** (would avoid Rule 11 sanctions). 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).

Question 3 (50 points) maximum of 1000 words. ~17 mins organizing ~63 mins writing

Your preliminary research suggests that Officer Woo has a potential claim in negligence against Sheila Kirk. For this question, make Woo's **best argument against** Sheila, applying all the elements of negligence to the specific facts. (**Do not repeat the information about the damages** Woo could receive in answering this question - it should all be in Question 1.)

Question 4 (20 points) maximum of 400 words. ~7 mins organizing ~25 mins writing

Your research also suggests that Sheila Kirk will likely raise a number of defenses and counterclaims. For this question, identify **the ONE element of negligence that** Sheila could **most successfully** defend against and **identify her arguments to defend that one negligence element using law and facts**.

Do not analyze whether other parties could offset any damages Sheila might be liable for, or whether other parties are more at fault.

In your answer, explain why Sheila has the best chance of being successful defending the element you selected rather than another element.

Proof read/spell check/review directions ~5 mins

****Remember:** You know a lot about torts. A lot more than you knew in August. Take a deep breath, stay calm, and show me your best work. I know each of you can do an excellent job!