

WIDENER UNIVERSITY SCHOOL OF LAW

TORTS

MIDTERM EXAM

Professor Pope

Fall 2009

GENERAL INSTRUCTIONS:

1. **Honor Code:** While you are taking this exam, you may not discuss it with anyone.
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 thirteen pages, including this cover page. Please make sure that your exam is complete.
4. **Identification:** Write your exam number in the space provided in the upper-right hand corner of this page. Write your exam number on the cover of each Bluebook (or your ExamSoft file) that you use for Parts Two and Three.
5. **Anonymity:** The exams are graded anonymously. Do *not* put your name or anything else that may identify you (except for your student number) on the exam.
6. **Timing:** This exam must be completed within sixty-five minutes.
7. **Scoring:** There are 80 points on the exam, approximately 1.2 points per minute.
8. **Open Book:** This is an OPEN book exam. You may use *any* written materials, including, but not limited to: the casebook, other required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines. You may not use a computer other than in its ExamSoft mode.
9. **Format:** The exam consists of three parts which count toward your grade in proportion to the amount of time allocated.

PART ONE comprises twelve multiple choice questions worth 2½ points each, for a *combined* total of thirty points. The suggested completion time is **24 minutes**.

PART TWO comprises one short essay question worth fifteen points. The suggested completion time is **12 minutes**.

PART THREE comprises one long essay question worth thirty-five points. The suggested completion time is **29 minutes**.

10. **Grading:** All exams will receive a raw score from zero to 80. The raw score is meaningful only relative to the raw score of the other students in the class. The raw score will be converted into a scaled score, based on the class curve. For example, if the highest raw score in the class were 60 of 80, then that student would typically receive an "A." I will post an explanatory memo and/or a model answer to TWEN a few weeks after the exam.
11. **Special Instructions:** Instructions specific to each exam section are printed immediately below.

SPECIAL INSTRUCTIONS FOR PART ONE:

1. **Format:** This Part contains twelve multiple choice questions, worth 2½ points each, for a combined total of 30 points. This part has a suggested completion time of 24 minutes. Please note that the questions vary in both length and complexity. You might answer some in 30 seconds and others in three minutes.
2. **Identification:** Write your Student ID on the first page of *this exam booklet*.
3. **Circle the Best Answer:** *Circle* the best answer choice on the exam itself.
4. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why in a separately marked section of your Bluebook or ExamSoft file. 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 PARTS TWO AND THREE:

1. **Submission:** Write your answers in your Bluebook examination booklets or ExamSoft file. I will not read any material which appears only on scrap paper.
2. **Legibility:** Write legibly. I will do my best to read your handwriting, but must disregard (and not give you points for) writing that is too small to read or otherwise illegible.
3. **Outlining Your Answer:** I strongly encourage you to use one-fourth of the allotted time per question to outline your answers on scrap paper *before* beginning to write in your exam booklet or ExamSoft file.

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.

4. **Answer Format:** This is important. *Use headings and subheadings.* Use short single-idea paragraphs (leaving a blank line between paragraphs). Much less important, but sometimes helpful, are introductory roadmaps.
5. **Answer Content:** Address *all* (but only) relevant issues that arise from the fact pattern. 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.
6. **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 substitute for stating the law. 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?
7. **Cross-Referencing:** You may reference your own previous analysis (*e.g.* B’s battery claim against C is identical to A’s, above, because __.” But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
8. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize key weaknesses in your position and make the argument on the other side.
9. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (implied by, suggested by, or at least consistent with the fact pattern) that you believe to be necessary to answer the question.

STOP !

STOP !

**DO NOT TURN THIS
PAGE UNTIL THE
PROCTOR SIGNALS**

PART ONE

12 questions worth 2.5 points each = 30 points
Suggested Time = 24 minutes

1. The city of Wilmington has an ordinance that makes it an offense, punishable by fine, for the owner of a dog to permit the dog to run unleashed on a public street. Wiggum, a police officer, observed a small dog running loose in the street. As Wiggum picked the dog up, White, who was seated in her car lawfully parked at the curb, called out, “Oh, thank you, Officer, for returning Fifi.” Wiggum asked White whether the dog was hers, and when she acknowledged ownership, he asked to see her driver’s license. White gave her name and address, but she refused to produce a driver’s license. Wiggum then told her to produce her driver’s license if she did not want to go to jail. White responded by saying, “Isn’t this ridiculous?” Wiggum took her by the arm and said, “Let’s go. You are under arrest.”

White cried out that Wiggum was hurting her but he refused to release her arm, and she struck him with her free hand. Wiggum then dragged White from her car, forcibly forced her into his squad car, and took her to the police station. The incident took place on the street in front of the apartment where White and her aged father, Daddy, lived. Wiggum did not know that Daddy had observed what took place from a window in the apartment.

If White’s father, Daddy, asserts a claim against Wiggum for the intentional infliction of emotional distress, will Daddy prevail?

- (A) Yes, if Wiggum’s acts caused Daddy severe emotional distress.
- (B) Yes, if it is found that Wiggum’s behavior was extreme and outrageous with respect to White.
- (C) No, because Wiggum did not know that Daddy was watching.
- (D) No, because Daddy was not within the zone of physical danger.

Questions 2 and 3 are based on the following fact situation.

Kant ordered some merchandise from Store. When the merchandise was delivered, Kant decided that it was not what he had ordered, and he returned it for credit. Store refused to credit Kant's account, continued to bill him, and, after 60 days, turned the account over to Hegel, a bill collector, for collection.

Hegel called at Kant's house at 8:00 p.m. on a summer evening while many of Kant's neighbors were seated on their porches. When Kant opened the door, Hegel, who was standing just outside the door, raised an electrically amplified bullhorn to his mouth. In a voice that could be heard a block away, Hegel called Kant a "deadbeat" and asked him when he intended to pay his bill to Store. Kant, greatly angered, slammed the door shut. The door struck the bullhorn and jammed it forcibly against Hegel's face. As a consequence, Hegel lost his front teeth.

2. If Kant asserts a claim based on intentional infliction of emotional distress against Hegel, will Kant prevail?

- (A) Yes, because Hegel's conduct was extreme and outrageous.
- (B) Yes, because Hegel was intruding on Kant's property.
- (C) No, unless Kant suffered physical harm.
- (D) No, if Kant still owed Store for the merchandise.

3. If Hegel asserts a claim of battery against Kant, will Hegel prevail?

- (A) Yes, because Kant had not first asked Hegel to leave the property.
- (B) Yes, if Kant knew that the door was substantially certain to strike the bullhorn.
- (C) No, if Hegel's conduct triggered Kant's response.
- (D) No, because Hegel was an intruder on Kant's property.

4. **Nixon, a well-known politician, was scheduled to address a large crowd at a political dinner. Just as he was about to sit down at the head table, Frost pushed Nixon's chair to one side. As a result, Nixon fell to the floor. Nixon was embarrassed at being made to look foolish before a large audience but suffered no physical harm.**

If Nixon asserts a claim against Frost for damages because of his embarrassment, will Nixon prevail?

- (A) Yes, if Frost knew that Nixon was about to sit on the chair.
- (B) Yes, if Frost negligently failed to notice that Nixon was about to sit on the chair.
- (C) No, because Nixon suffered no physical harm along with his embarrassment.
- (D) No, if in moving the chair Frost intended only a good-natured practical joke on Nixon.

Questions 5 and 6 are based on the following fact situation.

When Adolf heard that his neighbor, Martin, intended to sell his home to a minority purchaser, Adolf told Martin that Martin and his wife and children would meet with "accidents" if he did so. Martin then called the prospective purchaser and told him that he was taking the house off the market.

5. **If Martin asserts a claim against Adolf for assault, Martin will**

- (A) Recover, if Adolf intended to place Martin in fear of physical harm.
- (B) Recover, because Adolf's conduct was extreme and outrageous.
- (C) Not recover, if Adolf took no action that threatened immediate physical harm to Martin.
- (D) Not recover, because Martin's action removed any threat of harmful force.

6. **If Martin asserts a claim against Adolf for intentional infliction of emotional distress, Martin will**
- (A) Recover if Martin suffered severe emotional distress as a consequence of Adolf's conduct.
 - (B) Recover, because Adolf intended to frighten Martin.
 - (C) Not recover, because Adolf made no threat of immediate physical harm to Martin or his family.
 - (D) Not recover if Martin suffered no physical harm as a consequence of Adolf's conduct.

Questions 7 and 8 are based on the following fact situation.

Descartes was a pitcher for the Philosophers, a professional baseball team. While Descartes was throwing warm-up pitches on the sidelines during a game, he was continuously heckled by some spectators seated in the stands above the dugout behind a wire mesh fence. On several occasions, Descartes turned and looked directly at the hecklers with a scowl on his face, but the heckling continued. Descartes wound up as though he was preparing to pitch in the direction of his catcher; however, the ball traveled from his hand, at high speed, at a 90-degree angle from the line to the catcher and directly toward the hecklers in the stands. The ball passed through the wire mesh fence and struck Bentham, one of the hecklers.

Bentham brought an action for damages against Descartes and the Philosophers, based upon negligence and battery. The trial court directed a verdict for the defendants on the battery count. The jury found for the defendants on the negligence count because the jury determined that Descartes could not "foresee" that the ball would pass through the wire mesh fence.

Bentham has appealed the judgments on the battery counts, contending that the trial court erred in directing verdicts for Descartes and the Philosophers.

7. **On appeal, the judgment entered on the directed verdict in Descartes' favor on the battery claim should be**
- (A) Affirmed, because the jury found on the evidence that Descartes could not foresee that the ball would pass through the fence.
 - (B) Affirmed, if there was evidence that Descartes was mentally ill and that his act was the product of his mental illness.
 - (C) Reversed and the case remanded, if a jury could find on the evidence that Descartes intended to cause the hecklers to fear being hit.
 - (D) Reversed and the case remanded, because a jury could find that Descartes's conduct was extreme and outrageous, and the cause of physical harm to Bentham.
8. **For this question only, assume that, on appeal, the court holds that the question of whether Descartes committed a battery is a jury issue. The judgment entered on the directed verdict in favor of the Philosophers should then be**
- (A) Reversed and the case remanded, because a jury could find the Philosophers vicariously liable for a battery committed by Descartes in the course of his employment.
 - (B) Affirmed because no reasonable jury could find that Philosophers, in contrast to Descartes, committed a battery, and an employer can never be vicariously liable for the intentional tort of an employee.

Questions 9 and 10 are based on the following fact situation.

Aristotle wanted to purchase a used motor vehicle. The used car lot of Car Company, in a remote section away from town, was enclosed by a ten-foot chain link fence. While Aristotle and Sales Representative, an employee of Car Company, were in the used car lot looking at cars, a security guard locked the gate at 2:30 p.m., because it was Saturday and the lot was supposed to be closed after 2:00 p.m. Saturday until Monday morning. At 2:45 p.m., Aristotle and Sales Representative discovered they were locked in. There was no traffic in the vicinity and no way in which help could be summoned. After two hours, Aristotle began to panic at the prospect of remaining undiscovered and without food and water until Monday morning. Sales Representative decided to wait in a car until help should come. Aristotle tried to climb over the fence and, in doing so, fell and was injured.

9. **If Car Company sues Aristotle for trespass to land:**
- A. It will likely recover because Aristotle entered the car lot.
 - B. It will likely recover because Aristotle remained on the car lot after the time he was authorized to be there.
 - C. It will likely NOT recover.
10. **If Aristotle sues for false imprisonment, will Aristotle prevail?**
- (A) Yes, because he was confined against his will.
 - (B) Yes, because he was harmed as a result of this confinement.
 - (C) No, unless the security guard was negligent in locking the gate.
 - (D) No, unless the security guard knew that someone was in the lot at the time the guard locked the gate.
11. **Customer went into Store at approximately 7:45 p.m to look at some suits that were on sale. The clerks were busy, and one of them told him that he should wait on himself. Customer selected three suits from a rack and went into the dressing room to try them on. Signs posted on the walls of Store state that closing time is 9:00 p.m.; however, because of a special awards banquet for employees, Store was closed at 8:00 p.m. on this day. The employees, in a hurry to get to the banquet, did not check the dressing rooms or turn off the lights before leaving. When Customer emerged from the dressing room a few minutes after 8:00 p.m., he was alone and locked in.**

Customer tried the front door but it was secured on the outside by a bar and padlock, so he went to the rear door. Customer grabbed the door knob and vigorously shook the door. It did not open, but the activity set off a mechanism that had been installed because of several recent thefts committed by persons who had hidden in the store until after closing time. The mechanism sprayed a chemical mist in Customer's face, causing him to become temporarily blind. The mechanism also activated an alarm carried by Store's employee, Watchman, who was just coming to work. Watchman unlocked the front door, ran into the store, and grabbed Customer. Customer, who was still unable to see, struck out at this person and hit a metal rack, injuring his hand. Watchman then identified himself, and Customer did the same. After assuring himself that Customer was telling the truth, Watchman allowed him to leave.

If Customer is to prevail on a claim against Store based on battery from the use of the chemical spray, Customer must establish that

- (A) He suffered severe bodily harm.
- (B) The spray mist was an offensive or harmful contact.
- (C) He suffered severe emotional distress.
- (D) His conduct was not a factual cause of the chemical's spraying him.

12. The specific interest primarily protected by the intentional tort of assault is:

- (A) Freedom from unwanted touching.
- (B) Deterrence of anti-social conduct.
- (C) Freedom from the anticipated threat of unwanted touching.
- (D) Economic efficiency.

----- **END OF PART ONE** -----

PART TWO

1 short essay question worth 15 points

Suggested time = 12 minutes

Kumar and Harold lived as roommates in Concord Plaza. Kumar and Harold moved in together on July 15, 2009. They were old friends, and Harold knew that Kumar owned a dog named Tiger. Kumar's previous apartment building, Naamans Dump, was also owned by Phoenix. Over the years, Kumar had told Harold stories about Tiger's aggressive behavior.

Tiger had never acted aggressively toward Harold, however, and Harold eagerly agreed to move in with Kumar and Tiger. Harold believed that Tiger would offer them both desirable protection. Kumar and Harold let Tiger roam the apartment unrestrained, and Harold helped Kumar care for Tiger. At times, Harold let Tiger sleep with him when Kumar was away on business. Two months later (September 15), Harold and Kumar were chatting one morning in Kumar's room. Harold rested his foot on a tire swing, which was suspended from the ceiling as a toy for Tiger. Harold was aware that Tiger sometimes swatted at the tire swing with his paws and gnawed on the tire. After Harold placed his foot on the tire, Tiger placed his mouth over Harold's foot. Harold then removed his foot from the tire swing. Kumar chastised Tiger and then placed his own foot onto the swing to see if Tiger would respond in the same manner. When Tiger did not respond to Kumar's foot on the swing, Harold, at Kumar's request, placed his foot on the swing once more to test the dog's reaction.

This time, Tiger lunged at Harold, biting his thigh in two places. As Harold fell to the floor in pain, he struck his jaw on the edge of Kumar's metal bed frame. From the floor, Harold grabbed the tire and pulled it back, then abruptly let it go. It swung around the room in a circle, crashing into several items on Kumar's shelves, including Kumar's collection of antique beer bottles. The tire stopped swinging when it hit Kumar in the stomach, causing him to gasp. Harold apologized and explained that he couldn't see Tiger, and was afraid he would attack him while he was on the floor, so he tried to swing the tire in a manner that would cover all of the area around her.

1. Evaluate intentional tort theories that Kumar might bring against Harold.
2. Do **NOT** discuss any privileges that Harold might assert.
3. Do **NOT** discuss any causes of action that Harold might bring against Kumar.

----- **END OF PART TWO** -----

PART THREE

1 long essay question worth 35 points

Suggested time = 29 minutes

In late September, the Widener University School of Law held its annual student versus faculty softball game and picnic. The game was hotly contested and, as a result of poor sportsmanship on both sides, tempers flared. Following the game, the students' team was presented with the winner's trophy, which Lindsey, the captain of the student team, held aloft. Thinking that it would be funny, Goldberg, a member of the faculty team, threw a ball at the trophy, striking it and knocking it from Lindsey's hands.

Angrily, Lindsey picked up the trophy, approached Goldberg and said, "If you weren't a professor here, I would take that trophy and stick it up your ass." Goldberg, who was physically much bigger than Lindsey and a former professional wrestler, did not feel threatened by Lindsey's reaction. But Culhane, another professor and member of the faculty team, believing that Lindsey was about to attack Goldberg, struck Lindsey with a baseball bat, resulting in a large bruise to Lindsey's arm.

1. Under what theory or theories might Goldberg bring an action for damages against Lindsey? What defenses, if any, might Lindsey assert? What is the likely result?
2. Under what theory or theories might Lindsey bring an action for damages against Goldberg? What defenses, if any, might Goldberg assert? What is the likely result?
3. Under what theory or theories might Lindsey bring an action for damages against Culhane? What defenses, if any, might Culhane assert? What is the likely result?

----- END OF PART THREE -----