

**Final Examination
Torts II
Gallagher
Spring 2007**

1. You have **three (3) hours** to complete this exam.
2. This is a **closed** book exam.
3. This exam consists of two parts, worth a total of 300 points.

Part I consists of one (1) Essay Question. This Essay Question #1 is worth 200 points. Please allocate your time accordingly. Please write your response in the blue books provided, or type your response. Please write clearly. Write on every other line and every other page to permit instructor comments, if you are handwriting your exam.

Part II consists of 25 multiple-choice questions. Part II is worth 100 points. Please allocate your time accordingly. Please mark your responses to the multiple choice questions on the separate “ParSCORE TEST FORM” using pen or pencil and following the instructions on that form. If you change your answer, place a clear **X** through the wrong answer and mark the correct answer. A machine will score the exam and any ambiguities will be counted as a wrong answer.

4. Write your exam number on your exam envelope. Put your correct class section and exam # at the top of this page, each page of questions, each blue book, and the “ParSCORE TEST FORM.” **Do not** use your name, student ID number or Social Security Number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, ParScore answer sheet, scratch paper, and this exam packet to the envelope and submit it to the proctor. **DO NOT** seal the envelope. Students who do not return all exam materials at the end of the exam may not be graded.

GOOD LUCK!

PART I
ESSAY QUESTION
(Suggested time: 2 hours)

Diversified Industries manufactures portable, outdoor charcoal barbeque grills. It also manufactures an entire line of accessories for its charcoal grills. The accessories include insulated barbeque mitts, grill cleaning scrapers, and stainless steel skewer, tongs and other turning tools. Grill users are eager to purchase accessories priced under \$10 and, in fact, Diversified makes more profits on its accessories than it does on the grills themselves.

Diversified's Engineering Department developed an elongated barbeque lighter with the trademarked name "Dependable Flames". The lighter is similar to a butane cigarette lighter, such as BIC, but is much longer--so that one "flicks" an "ON" switch on the bottom of the lighter, and the top of the lighter some 8 inches away ignites the butane stored inside the handle. Unlike a cigarette lighter where the flame continues as long as one presses down on an ignition switch, the Dependable Flames lighter stays lit until the user presses an "OFF" button on the handle. Thus, the elongated neck allows grillers to keep a flame burning while moving it around the charcoal, and to keep the flame away from the hand of the person holding the lighter.

Diversified's Engineering Department was obviously aware that any flaming product would pose a potential hazard. Therefore, the department considered adding one of two existing technologies to the design of the lighter: (1) a manual safety switch at the base of the handle that would make it impossible for the lighter to ignite while the safety switch was engaged (i.e., pressing the "ON" switch would not start the lighter while the safety switch was engaged); or (2) an automatic timer that would automatically extinguish the flame after 10 seconds of use.

Diversified's Legal Department, which was required to review all new products, learned from the Consumer Federation of America, that an average of 140 people in America are killed each year as a result of fires attributed to accidents with lighters.

Diversified's Marketing Department conducted tests with focus groups using prototypes of the Dependable Flames lighter equipped with a manual safety switch. The Department found that most people who used the manual switch later forgot the switch was activated and subsequently assumed the lighter had stopped working. The Marketing department also found that, when the safety switch was on, 90% of children under the age of 8 could not figure out how to make the lighter ignite, thus making the lighter almost "child proof."

Diversified's Finance Department determined that equipping the lighter with a safety switch would increase manufacturing costs to \$2.78 per unit, which would still allow Diversified to sell the lighters for \$10. However, the profit Diversified would make at \$10 price would only be 24% of what it would make if it sold the lighters

without a manual safety switch. On the other hand, the automatic timer would increase manufacturing costs to \$7.82 per unit, meaning that Diversified would have to sell the lighters for \$17 each in order to make a profit comparable to what it would make if it installed the manual safety switch. Pricing the lighter at \$17, however, would run the risk that consumers would not want to purchase it.

After considering the information from all of its Departments, Diversified decided to sell the Dependable Flames lighter with neither the safety switch nor the timing device. The lighters are packaged with brightly colored cardboard that has both a picture and written text explaining how to ignite the flame and to engage the “OFF” button to extinguish it. The packaging also contains the following language:

This Diversified product is the best, most reliable barbecue lighter on the market. It has been designed and manufactured to give you complete satisfaction. If for any reason you are not satisfied with the performance of this product, Diversified will replace it at no cost to you.

Penny purchased a Dependable Flames lighter and has used it to start charcoal fires in her barbecue grill for the past several months. Last month she was grilling outside on her concrete patio. She lit the charcoal fire using her Dependable Flames lighter and pressed the “OFF” button to extinguish the flame. At that moment her dog, Rover, came over to her and started barking. Penny knew that Rover wanted to play “fetch.” Penny looked around for a tennis ball or a stick to throw but found nothing, except the Dependable Flames she had in her hand.

Penny threw the lighter towards the back yard fence. Rover ran after the lighter, caught it in mid-air before it hit the fence, and raced back with it to Penny. She took the lighter from his mouth and threw it again. He ran, caught and returned again. She threw it a third time, but heard the telephone ringing inside her house and went to answer it. Rover caught the lighter and ran to where Penny had been standing. Rover released the lighter from between his teeth and hit the “ON” switch with his paw, igniting the Dependable Flames lighter. Scared by the fire, Rover ran away. Unfortunately, the flaming lighter then rolled off the concrete patio and into a patch of dry grass. The grass broke into flames. The flames quickly spread to Penny’s house, temporarily trapping her inside. Before she was rescued, Penny suffered burns and had to be hospitalized. (Rover was not harmed.)

After leaving the hospital, Penny, angry at having been injured by what she considered an uncaring and reckless corporation, returned home and posted signs on her front lawn that showed pictures of her burned house and her own burn injuries. Below these pictures, Penny added text that stated: "FIRE DAMAGE COURTESY OF DIVERSIFIED INDUSTRIES' PRESIDENT, SAM DOOLITTLE—HE KNEW HIS SHODDY PRODUCT WOULD HURT SOMEONE LIKE ME BUT DIDN'T CARE. PROFITS OVER SAFETY?"

Based on the foregoing facts, please analyze:

(1) what tort causes of action can Penny raise against Diversified, and how likely is she to be successful on these causes of action?

(2) whether Sam Doolittle is likely to succeed if he sues Penny for defamation.

END OF ESSAY

END OF EXAM