

## **Final Examination**

### **Torts II**

**Professor Gallagher**

**Spring 2008**

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 (three hundred) points.
  - **Part I** consists of two (2) Essay Questions. Each Essay Question is worth 100 (one hundred) 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 (one hundred) 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 **student 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 ONE

(Suggested time: 1 hour)

Able purchased from Priceco store a four-wheeled “Ride-On” lawn mower, manufactured by Sorrow, Inc. The large 4-wheel mower was equipped with a seat that made it possible for Able to sit while mowing his spacious lawn.

The mower had a very sharp cutting blade, guarded by a round metal cover. The blade was located between the two rear wheels of the mower, behind and below the operator’s seat. The mower was equipped with a shift lever, to drive forward or in reverse, and a speed control, to go fast or slow. The mower was also equipped with a “cutter on/cutter off” switch, to allow the operator to turn the cutting blade off when driving the mower over areas not intended to be mowed.

At the time he purchased the mower, Able received and read an “Owner’s Manual”, which contained the following list of safety precautions: “Keep hands and feet clear of the cutter unit at all times,” “Do not operate mower unless seated,” and “Instruct individuals to stay away from the mower while it is in operation.”

One day, while using the mower to mow his lawn, Able was approached by his neighbor, Dana. Dana asked Able to give her a ride on the mower. Able agreed to do so. At first, Dana sat alongside Able on the seat of the mower as Able began driving the mower forward, but she stood up on the mower seat shortly after that.

Immediately after Dana stood up on the mower, Able hit a bump and Dana fell off the mower and onto the lawn. Able looked back at Dana, shifted the tractor into reverse, and began to move rearward in order to let Dana get back on the mower. In reverse, the mower was designed by Sorrow only to travel in the “fast” speed setting. (Consumer studies conducted by Sorrow during the mower design phase showed that operators sometimes choose to mow in reverse, but more often use the reverse function solely to change the position of the mower, and thus preferred a faster speed when backing up the mower.)

While backing up, Able looked forward momentarily and did not realize that the mower had run over Dana until he heard her scream and looked down to see that Dana’s right foot was underneath the mower and had been severely mangled by the mower blade.

The mower Able had purchased lacked a “no-mow-in-reverse” (NMIR) safety feature to prevent back-over injuries such as the one that mangled Dana’s foot. At the time of Able’s purchase, the NMIR feature was available on other mowers made by Sorrow that cost about \$150 more than the model purchased by Able. Able had chosen the model he purchased simply because that model was less expensive.

After the accident, Able went to Priceco and told the salesperson he had purchased his mower from about the accident involving Dana. The salesperson responded, “You know, we just today found out from Sorrow that it added the NMIR feature on its newer and more expensive mowers because so many kids were getting hurt when people were backing up.”

Based on the foregoing facts, please analyze what tort causes of action Dana can raise against (1) Sorrow and (2) Priceco. Be sure to analyze how likely it is that any cause of action you identify will be successful (be sure to explain your reasoning).

## **END OF ESSAY ONE**

### **PART I**

#### **ESSAY QUESTION TWO**

(Suggested time: 1 hour)

Delta, a world-famous actress, decided to leave her live-in boyfriend of 15 years, Paul. Paul had been an actor as a child, having starred in a popular television sit-com 30 years ago. While living with Delta, Paul’s only job was to serve as Delta’s “personal assistant”, a job which consisted of such duties as making sure Delta was supplied with the correct brand of mineral water on movie sets. Sitting in her home office, Delta drafted an “announcement” of her newly “single-and-available” status to the world to post along with an unflattering picture of Paul (one that inaccurately makes him look like he’s got a huge nose) on her web page, [ilovedelta.com](http://ilovedelta.com), with the following statements printed under the picture:

“Well, I finally left this loser. He’s made my life miserable for a long time. All he did the entire time he was with me was mooch off of my success—he never worked at a real job the entire time we were together, maybe because he has no actual talent. Hey, ladies, he’s all yours, but I should tell my loyal fans to leave this guy alone. He’s no good. He tries to hide the fact that he wears a toupee, which only makes him look ridiculous. And all he ever wants to do is sleep around with any woman he sees, like he did the whole time we were together. Frankly, I’m surprised he has the energy to do so, since he is undergoing treatment for cirrhosis of the liver. Good riddance!”

Before Delta could upload the picture and statements to her web page, she left her office in order to take a call from her agent in another room. While she was on the phone

in the other room, Delta's personal assistant, Candy, who had been working with Delta all day, came into Delta's office and posted the picture and statements to the web site.

Based on the foregoing facts, please analyze what tort causes of action Paul can raise against Delta. Be sure to analyze how likely it is that any cause of action you identify will be successful (be sure to explain your reasoning).

**END OF ESSAY TWO**