

**PART I****ESSAY QUESTION ONE**

(Suggested time: 1 hour)

Alan wanted to build his dream house and met with Ben, a local architect who was well-known in the local community, to see whether Ben could design the house. Alan knew Ben because both of them had served together on the local grand jury two years ago. While serving on the grand jury, Ben had confided to Alan that 15 years ago he had cheated on his taxes once and had regretted it ever since—so much so that ever since he voluntarily pays more taxes than he owes each year.

Ben agreed that he could create a design that Alan would be happy with and estimated that his professional fees to prepare the design and architectural drawings would be \$50,000. Ben actually thought that the elaborate design that Alan wanted would cost about \$100,000 to prepare, but he needed the business and did not want to scare Alan off with a high estimate upfront. Alan hired Ben on an hourly basis to prepare the design and architectural drawings. After completing this work, Ben billed Alan for \$75,000. Alan was furious that Ben's bill was so much more than the estimate, but he paid it.

The next day, Alan sent an anonymous e-mail message to the local Newspaper, stating: "You should investigate this shyster, Ben. He does good work, but he sucks you in with a low-ball estimate and overcharges later. Plus, I happen to know that he cheats on his taxes, too—which tells you a lot about his morals. I wouldn't trust him again with anything."

The editor of the Newspaper telephoned Ben to try to get his side of the story but only reached Ben's phone machine. Because of deadline pressures, the editor did not leave a message for Ben. The same day, the Newspaper published Alan's quoted language verbatim, attributing it only to an "anonymous source", in a column in the paper called "Community Opinion".

Based on the foregoing facts, please analyze what tort causes of action Ben can raise against (1) Newspaper and (2) Alan. 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)

Manufacturer designed and manufactured a product called “InstaTea”, which brews tea instantly. Manufacturer sold the InstaTea product nationwide through supermarkets at a cost of \$35. Users of the InstaTea product are to put cold water into its liquid reservoir, close the reservoir lid, then wait 2 minutes until the tea brews in an attached pot. A brochure that accompanies the product states: “WARNING: do not add cold water while unit is brewing, as steam or hot water may erupt from liquid reservoir.” The brochure also states prominently on the first page: “WARRANTY: Manufacturer makes no express or implied warranties concerning this product. Manufacturer expressly disclaims any liability for injuries resulting from misuse of this product.” Manufacturer added this disclaimer to its brochure several years ago because it had become aware that four people nationwide who purchased the InstaTea product had been scalded when they added cold water to the liquid reservoir while the unit was brewing. At that time, Manufacturer determined that it could put a safety guard on the InstaTea product that would protect against spurting water or steam, but decided against doing so because it would raise the cost for this product by \$2 per unit sold, which would cut Manufacturer’s profit from the sale of this product by ½.

The InstaTea product was not a big-seller, so Manufacturer recently sold its remaining inventory of 1000 units for \$1,000 to Darius, an out-of-work engineer who has been supplementing his unemployment income for the past year by selling discontinued consumer products and clothing on E-Bay, an Internet-based online auction site.

Sally purchased the InstaTea product from Darius for \$10 through his auction on E-Bay. Sally did not read the product brochure. The first time she used the InstaTea product, she tried to add one cup of cold water to the product while it was already brewing some tea. At that time, although the product spurted some steam, nothing else happened and Sally forgot about it. Two weeks later, however, Sally once again added cold water while the product was brewing. This time, hot water splashed out of the liquid reservoir and severely scalded Sally in the face.

Based on the foregoing facts, please analyze what tort causes of action Sally can raise against (1) Manufacturer and (2) Darius. 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**