

**FINAL EXAMINATION
PRIVACY, DEFAMATION AND OTHER RELATIONAL TORTS**

PROFESSOR JONES

SPRING 2006

1. You have **three (3) hours** to complete this exam.
2. This is a **closed** book exam. Students may not use any outside materials or confer with each other during the exam.
3. This exam consists of just one set of facts. But the questions about these facts are divided in to three parts, one for each of the three plaintiffs. As each part indicates, part one (I) can earn one-half of all the possible points available on this exam; part two (II) one-sixth; and part three (III) one-third.
4. Feel free to abbreviate Plaintiff Payless Foods as PF, and defendant Dawn Fresh as DF. Similarly, feel free to repeat an earlier paragraph with a brief reference to it.
5. Please write your response in the blue books provided. Please write clearly. Write on every other line and every other page to permit instructor comments.
6. Write your exam number on your exam envelope. Put your correct student exam # at the top of this page, each page of questions and each blue book. **Do not** use your name, student ID number or Social Security Number on any exam materials.
7. At the conclusion of the exam, return all test materials, including blue books, 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!

THE FACTS

Payless Foods promoted Pam to manage one of its supermarkets. The contract was for two years at a substantial increase in salary and benefits.

Dawn Fresh opened its new grocery store in the same new shopping mall. It employed Dina to manage it. Dina and Pam hated each other for personal reasons.

One day, Dina overheard two shoppers at Dawn Fresh complaining about the tired smelly old meat that Payless Foods was selling. Dina hired Sly, who had been a federal meat inspector in another State, to carry out a special task: to get a job with Payless Foods and secretly investigate whether it was violating safe food laws, and to make a video recording of any evidence of it.

Accordingly, Sly applied for an advertised position as the assistant security officer at Payless Foods. Pam interviewed him. Sly lied when he told her that he had experience as a security officer. Impressed, Pam hired him on the spot to a six-month probationary period.

No one at Payless Foods realized that Sly had secretly hidden a tiny camera and microphone in his hat (hatcam). He used it to secretly record nearly forty hours of sights and sounds over a one-month period. He secretly recorded employees of Payless Foods who repeatedly violated safe food laws regarding meat in work areas not visible to shoppers. Sly recorded Pablo speaking quietly in Spanish to another employee in whom he frequently confided. The Spanish words essentially meant that their bosses were trying too hard to save money on meat that was no longer healthy to eat.

One evening, Sly planted a tiny microphone, but not a camera, inside a room to which employees could go during their breaks from work. The room could be locked from the inside. He recorded the following words of Pablo: I love you so much. The only sounds recorded thereafter were those of passionate lovemaking and the words of an unidentified woman who said, Oh Pablo, Pablo.

With his mission accomplished, Sly quit one month as assistant security officer. He lied when he told Pam that he had to leave for family reasons. Pam had a paycheck issued to him for the time he had worked and invited him to return when he could.

Sly gave his forty hours of recordings to Dina. However, Sly did not realize that he had carelessly included in it six minutes of violations recorded at an unidentified meat market that looked very much like the meat handling areas of Payless Foods. The practices at this other place were more gross than any of those recorded at Payless Foods. Sly also forgot to delete the ten minutes of the sounds of Pablo's love making.

Dina was extremely pleased with the evidence and paid Sly a big bonus. Dina edited out only the ten minutes of lovemaking by Pablo from the copies she made. Dina had Sly deliver one copy to KXYZ for its weekly program on local food issues and another copy to Sly's old supervisor in the federal meat inspection program.

KXYZ edited the many hours of videotape down to forty minutes of the most unsafe meat handling practices. The final version included the six minutes not recorded at Payless Foods. This final videotape was played on KXWZ's weekly television show called Local Food Issues. The host played Pablo's words in Spanish on the program to support the theory that the unsafe practices were the result of Pam's efforts to cut costs.

Business at Payless Food declined. Pam was fired. Business at Dawn Fresh increased. Dina was promoted to a higher position with the corporation that owned Dawn Fresh.

I (1/2)

Payless Foods (PF) sued Sly, Dawn Fresh (DF) and KXYZ for damages. What theories of liability should it advance against each of these three defendants? If the plaintiff prevails against any defendant, what damages could it recover? Discuss these two questions.

II (1/6)

Pablo, a bachelor, sued Sly. Will he prevail? Discuss.

III (1/3)

Pam sued Dina and Dawn Fresh (DF) for damages. What theories of liability should she advance against each of these two defendants? Will she prevail against any defendant on any theory? Discuss these two questions.