

**FINAL EXAMINATION
TORTS II (LS I)
PROFESSOR JOSEPH LAVITT
SPRING 2007**

1. **You have three (3.0) hours to complete this examination.**
2. **This examination is closed book.** You may not refer to any books, notes or reference materials. You may not make any contact with any source inside or outside the classroom, by phone, internet connection, or otherwise, and you may not confer with each other during the examination.
3. **This exam consists of two sections.**

Section One consists of twenty (20) multiple-choice questions, scored at 5 points each. Section One is worth a possible total of **100 points**. Answer each multiple-choice question by marking on the separate “ParSCORE TEST FORM” the one most correct response to each question. 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.

Section Two consists of one hypothetical fact situation, followed by two essay questions. Section Two is worth a possible total of **200 points**.
4. **You may allocate your time as you wish.** It is recommended that you allocate **one hour** to Section One. It is recommended that you allocate **two hours** to Section Two.
5. The same proper names are used in different hypothetical fact situations, e.g., Able, Baker, Charlie, and Dana. These hypothetical parties play different roles, and have different identities and attributes in each of the different hypothetical fact situations. Thus, for example, the actor named “Able” in one hypothetical fact situation should not be understood to be the same person as the actor named “Able” described in another.
6. The hypothetical fact situation set forth in Section Two raises numerous issues. Respond as fully as possible within the time allowed, being mindful of your time to make sure you will be able to fully respond. Explain fully the grounds that support your response. A response which is unsupported by a thorough discussion justifying the response will not receive full credit. Read, think and analyze before you begin to write. Be as clear and concise as possible. Points will not be earned for rhetorical flourishes.
7. If you write your essay responses in the blue books provided, please write clearly and write on every other line and every other page to permit instructor comments.
8. Write your exam number on your exam envelope. Write your student exam # at the top of this page, and each page which follows. Do not use your name, student ID number or Social Security Number on any exam materials.
9. At the conclusion of the examination, return all exam materials to the exam 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!

SECTION TWO

XYZ Corporation (“XYZ”) manufactures a very popular “paintball gun” called “the GI Jo Avenger” (the “GIJ”) - which looks just like a real rifle. A “paintball gun” uses compressed gas to propel a small paint-filled capsule known as a “paintball” (also manufactured by XYZ) which, upon contact, breaks open, allowing paint inside to escape and “mark” the impacted target. “Paintball guns” are often used by players in a form of contest, which mimics military combat, in which the players shoot each other with paintballs. Organized paintball competitions are commonplace events.

When propelled from a GIJ, a paintball is generally incapable of causing permanent injury to most areas of the body, even if fired from a short distance. Depending on the angle of impact and the distance from which the paintball was fired, however, a paintball fired from a GIJ might cause serious injury to the eye of another person, including blindness. XYZ’s product designers experimented with alternative designs to avoid the risk of serious injury to the eye of another person upon direct impact by a paintball fired from a GIJ, but were unable to develop an alternative design which would not substantially impair the ability of the GIJ to propel a paintball with sufficient force to hit a typical target and produce the desired and intended paint “splatter” upon impact.

Every GIJ produced by XYZ is packaged for sale in a cardboard box. On the side of each box, the following words are printed in 10 pt. font (*actual size shown immediately below*):

READY TO USE. SIMPLY LOAD AND FIRE!

XYZ warrants that this paintball gun is free from all manufacturing defects, and is completely safe for ordinary use. **WARNING:** All players must wear, at all times, protective eye covering. XYZ disclaims all warranties, express or implied.

On December 2, 2006, Able went to a local store to purchase a GIJ as a gift for Able’s twenty-one-year-old son, Tony. Tony greatly wanted to learn to use a paintball gun. The morning Able gave Tony the gift-wrapped GIJ box, Tony ripped it open as fast as he could, unpacked the GIJ, and immediately loaded the GIJ with the included paintballs. In their mutual excitement, Able and Tony very quickly read the words printed on the side of the GIJ box. After loading the GIJ, Tony promptly pointed the GIJ at his mother, Dana, yelled “Look here, Mom!” and then deliberately fired a paintball directly at Dana’s face. The paintball struck Dana’s right eye. As a result of damage caused by the paintball, Dana lost all of the vision in her right eye.

Tony did not intend to hurt his mother. Tony thought the paintball propelled from the GIJ would harmlessly splatter, causing Dana only annoyance, not blindness.

And although Tony loved “playing soldier” all his life, he had no history of hurting anyone purposefully. Only one other incident in Tony’s life involved inflicting any injury upon another person. When Tony was in the fifth grade, Tony folded a piece of paper into the shape of a “paper airplane” and flew the paper airplane during class at school. The paper airplane struck the back of the head of one of Tony’s classmates, causing a small paper cut, but no serious harm. Tony was sent home for the day, with a note to his parents, explaining what he had done, and urging Tony’s parents to counsel him never to do anything like that again. No formal discipline was imposed by the school against Tony for the paper airplane incident.

After Dana was injured, Dana decided to report the circumstances leading to Dana’s injury to the Bullfeathers Gazette, a local newspaper (the “BG”.) By so doing, Dana hoped to call to the attention of the public the alarming and noteworthy events which led to Dana’s injury, and to thereby make the public aware of the dangers associated with widespread use of the GIJ. Dana called the BG, and spoke with its news editor, Mr. P. White.

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SECTION TWO (CON'T)

Mr. White assigned to the story Mr. T. Abloid — a full-time employee of the BG. Mr. White knew Abloid to be a personal friend of the CEO of XYZ, and one of the most aggressive investigative reporters on the BG's staff. White told Abloid to write a story expressing the "BG point of view" that Dana was attempting to exploit Dana's injury for financial reward.

White instructed Abloid to uncover evidence discrediting Tony in order to show that Dana's injury was in fact entirely Tony's fault. Abloid began extensively investigating Tony's past. By entirely lawful means, Abloid located and interviewed other students in Tony's classes throughout Tony's years in school. Fishing for information about Tony's past, Abloid ultimately heard from several of Tony's former classmates a substantially true version of the paper airplane incident.

Abloid also interviewed Dana. Dana told Abloid that she thought that the CEO of XYZ was personally responsible for Dana's injury, because the warning on the GIJ box clearly showed that XYZ knew that eye injury associated with use of the GIJ was probable.

The BG shortly thereafter published the following article (article in **bold**):

Mother Blames CEO for Blindness Caused By Offspring

By T. Abloid, Senior Investigative Reporter

Dana, a heretofore honorable, although obscure and unknown citizen of the State of Confusion, is calling for the trial of the CEO of XYZ Corporation, a local manufacturer, based on facts showing only that her son Tony has violent tendencies. After receiving a paintball gun made by XYZ – known as the GI Jo Avenger – as a gift from his father, Tony quickly put his mother's eye out by firing a paintball directly into her face.

Our investigation has revealed that this incident is not the first time Tony has hurt someone. Although as unknown to the public as his father is and his mother was, Tony is known to at least one other victim of his violence. It seems Tony was expelled from elementary school because he used a knife to injure one of his classmates. So much for the big pay off Dana was so hoping for: her son Tony is a virtual crime wave.

We interviewed Dana. As she stared menacingly at us, Dana bizarrely told the BG that the CEO of XYZ is to blame for her injury. Dana stated that the CEO knew that the paintball gun was capable of putting out a human eye, but he authorized putting the GIJ on the market anyway. We can state with some assurance that the CEO of XYZ is a person of utmost integrity. No wonder Dana's spawn Tony turned out to be just like another Charlie Manson; this Dana character wouldn't know the truth even if it shot her in the eye.

1. Fully, completely and objectively discuss each tort (i.e., tort cause of action) which may be alleged by Dana against XYZ Corporation arising out of the injury to Dana's eye.

2. Fully, completely and objectively discuss each tort (i.e., tort cause of action) which may be alleged by Tony against the Bullfeathers Gazette arising out of the article quoted above.

With respect to each tort you discuss, be sure to address whether each of the elements of each tort you discuss can be established, and identify and objectively evaluate the appropriate privileges or defenses which may be asserted in response to each such alleged tort.

END OF SECTION TWO

END OF EXAM
