

**FINAL EXAMINATION
TORTS I (LS I)
PROFESSOR JOSEPH LAVITT
FALL 2006**

You have two and one-half (2.5) 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 hypothetical fact situations, each of equal point value.** Each hypothetical fact situation is followed by essay questions. Each hypothetical will be worth 50% of your score on the final exam.
4. It is recommended that you allocate 50% of the allowed time to Hypothetical One and 50% of the allowed time to Hypothetical Two, though you may use the total allowed time as you choose. Each hypothetical fact situation 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 to the questions which follow the two hypotheticals.
5. Explain fully the grounds that support a response. A response which is unsupported by a thorough discussion justifying the response will not receive full credit.
6. Read, think and analyze before you begin to write. Be as clear and concise as possible. Points will not be earned for rhetorical flourishes or fancy language.
7. The same proper names are used in the hypothetical fact situations, e.g., Able, Baker, Charlie, and Dana. These hypothetical parties play different roles, and have different identities and attributes in the two different hypothetical fact situations. Thus, for example, the actor named "Able" in the first hypothetical fact situation should not be understood to be the same person as the actor named "Able" described in the second.
8. If you write your responses in the blue books provided, please write clearly and write on every other line and every other page to permit instructor comments.
9. 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.
10. 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!

HYPOTHETICAL ONE (50% OF FINAL EXAM SCORE)

Able, an independently wealthy student studying medicine, owns and resides in a home in San Francisco, California. Last May, at the conclusion of an especially hard semester in medical school, Able hosted a party for some of Able's fellow medical students at Able's home. For this party, Able obtained large quantities of narcotics. (Narcotics produce a state of intoxication characterized by an intense feeling of pleasure, a sense of well-being, drowsiness, and, after long-time use, delusions.) Narcotics are legally available only by prescription for a legitimate medical reason. Able illegally obtained the narcotics for Able's party from a local hospital, intending to illegally use and illegally offer these narcotics to Able's fellow classmates.

At the party, Able injected all of Able's classmates with large doses of the narcotics. One by one, they slumped into chairs, or onto the floor, and giggled for a while before falling asleep. Everyone at the party fell asleep (including Able, who was last one to use the narcotics), except Able's classmate Baker, a routine user of narcotics. Baker did not fall asleep. After Able injected narcotics into Baker's arm, Baker stayed awake, though completely intoxicated and delusional.

Baker became quite convinced that Baker could turn ordinary charcoal (the kind used for a barbeque) into gold by first grinding the charcoal into a powder, adding to the powder a solution of whiskey and salt, and then setting fire to the charcoal/whiskey/salt mixture, before the whiskey evaporated. After everyone else at the party had fallen asleep, Baker found some charcoal, smashed it into a powder on Able's coffee table, mixed some salt and a bottle of whiskey into the powder, and then immediately set the mixture on fire with a cigarette lighter.

After lighting the mixture, Baker was startled by an almost explosive flash of flame. Baker reacted by jumping back from the flame, and, in so doing, Baker stumbled over a fellow student sleeping on the floor, fell, hit Baker's head, and was knocked unconscious. Meanwhile, the fire that Baker started ignited the charcoal powder, while Able and the other students slept.

Able's neighbor, Peter, saw smoke pouring out of Able's windows. Alarmed, Peter rushed over to Able's home, and knocked furiously on the locked door, but no one answered. Fearing that Able or someone else might be hurt, Peter used all Peter's strength to break down the door of Able's home. The sound of the breaking door woke Charlie, another of the drugged, sleeping medical students. Confused by the smoke, narcotics, and seeing Peter bursting in, Charlie inaccurately concluded that Peter was an intruder who had thrown a smoke bomb into Able's home in preparation for a violent crime. Charlie drew a loaded pistol Charlie brought to the party concealed in Charlie's pocket, Charlie shot Peter in the leg, and then Charlie ran away. Immediately after Charlie shot him, Peter fainted from the pain and became unconscious.

Dana, another of the drugged, sleeping medical students, then woke up. Dana could not legally practice medicine without a license, and Dana had no such license. But, seeing Peter's leg bleeding, Dana decided that the best treatment for Peter's leg would be to administer the "Dana maneuver." No recognized authority or standard of care would support use of the "Dana maneuver" because Dana, in Dana's drug-induced state of mind, invented it that very night at Able's party. The "Dana maneuver" (insofar as Dana conceived it) entailed applying burning charcoal to Peter's leg. Dana tested the "Dana maneuver," burning Peter's leg severely in the process. Dana then fell asleep again, but not before uttering what Dana thought were the most insightful words ever spoken by a mortal human being: "All's well that ends well," said Dana.

HYPOTHETICAL ONE (CON'T)

The fire department soon arrived, and put out the charcoal mixture. Paramedics rushed Peter to the hospital. The bullet was removed from Peter's leg, and Peter's leg ultimately healed. But Peter was unable to work for six months after the shooting, and now has a permanent limp. Peter also has permanent scarring on Peter's leg as a result of the "Dana maneuver," which maneuver did no permanent harm to Peter other than the scarring, but did no good either.

Peter wishes to bring a civil action against Able, Baker, Charlie and Dana.

Fully, completely and objectively discuss each tort (i.e., tort cause of action) that Peter may allege against, and the appropriate privileges or defenses to each such tort that may be asserted by:

1. Able,
2. Baker,
3. Charlie; and
4. Dana.

Be sure to address whether Peter can establish each element of each tort you discuss, and identify and objectively evaluate the appropriate privileges or defenses which may be asserted in response to each such alleged tort. In addition, explain how liability, if any, might be apportioned among the parties.

END OF HYPOTHETICAL ONE

HYPOTHETICAL TWO (50% OF FINAL EXAM SCORE)

Able is an independent electrician. Able has no regular employees. When Able is unable to respond personally to a request for work that Able has received, Able asks another electrician to perform the work requested. In such instances, Able does not provide any tools or specific directions to the other electrician, but instead, merely informs the other electrician of the location and nature of a particular service request. If a request for work received by Able is referred by Able to and completed by an electrician other than Able, then Able customarily asks the electrician who performed the work to pay to Able 30% of the fees received for the work.

Dana and Dana's three-year old child, Echo, live in a house in San Francisco, California. Dana called the "24-hour hotline" listed by Able in the phone book to request that Able install a clothes dryer in Dana's bathroom (the only space available in Dana's small house convenient to the bathtub, which Dana often used to wash diapers and clothes, as well as for bathing.)

Able returned Dana's call within an hour, and told Dana: "I will send over one of the best electricians on my staff right away to take care of the installation. Don't worry, Dana, help is on the way!" Able then called Baker, a licensed electrician. Baker agreed with Able to go to Dana's house, install the clothes dryer, and split the fees (70/30) with Able upon payment by Dana.

Baker arrived at Dana's house. Baker assured Dana that the placement of the dryer in the bathroom close to the bathtub posed no problem, and that Baker could and would make a required modification to the electric plug of the dryer to allow that plug to be inserted into a standard electric outlet located on the wall of Dana's bedroom adjacent to the bathroom. The installation manual accompanying the dryer stated no such modification should be performed.

Baker failed to properly modify and insert the plug. In addition, Baker failed to install the dryer properly. If the dryer had been installed properly, then insertion of the plug in the wrong manner would have blown a fuse and caused no damage. But, because of improper installation of the dryer, insertion of the plug in the wrong manner was not evident during the installation. As a result of the improper modification and insertion of the plug, and improper installation of the dryer by Baker, Baker created a risk of a fatal electric shock to any person who, while standing in water, came in contact with the dryer while in operation.

After Baker finished installation of the dryer, Dana paid Baker, and Baker left. Eager to get started using the new dryer, Dana washed some clothes in the bathtub, loaded the wet clothes in the newly installed dryer, started the dryer, and began more washing in the bathtub. While Dana continued washing, the floor of the bathroom became increasingly wet. Echo ran into the bathroom, and while standing in water on the bathroom floor near the tub, touched the operating clothes dryer. Echo was instantaneously and fatally electrocuted. Dana witnessed Echo's death.

Dana felt overwhelming grief and anger after Echo died. She could not leave the house. She had difficulty sleeping, and stopped eating nearly entirely for weeks. Finally, the grief and anger became unbearable. Dana illegally obtained a device known as a "TASER." A TASER is a weapon which affects the central nervous system by imitating the electrical impulses used to communicate within the human body. Being hit by a "TASER" ordinarily causes only temporary incapacitation, but can cause serious injury to persons with a pre-existing condition, such as an abnormal heart condition. Dana planned to use the TASER to cause Able an electric shock.

HYPOTHETICAL TWO (CON'T)

Dana hid behind some bushes near the front steps of Able's home. When Able returned from work, and just as Able put the key in the lock of the front door of Able's home, Dana lunged out from behind the bushes, screaming, "See how it feels, you monster!" Dana fired the TASER at Able. Able had an abnormal heart condition, but Dana didn't know it. When hit by the TASER, Able immediately suffered a serious and disabling (but not fatal) heart attack. Since then, Able has been unable to work, owing to constant physical pain in Able's chest.

Fully, completely and objectively discuss each tort (i.e., tort cause of action) which may be alleged arising out of the facts described by this hypothetical fact situation, and the appropriate privileges or defenses which may be asserted in response.

With respect to each tort you discuss, be sure to identify by whom and against whom the tort may be alleged, 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.

If you conclude that Baker may be liable to another, be sure also to discuss whether Able may be held vicariously liable for Baker's conduct, and, if so, the potential merit of any claim by Able against Baker for indemnity.

END OF HYPOTHETICAL TWO

END OF EXAM
