

FINAL EXAMINATION

TORTS II

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1. You have three (3) hours for this examination.
2. This is a **closed** book examination.
3. This examination contains two parts: essays and objective questions. The total amount of points for the examination is 90 points
 1. **Part I** consists of two 60-minute essay questions, each of which counts for 30 points for a total of 60 points. You will have the first two hours of the exam time for this Part. You must begin with the essay section. You must also answer both questions. Although you are free to allot the first two hours in any manner for these two questions, I recommend one hour per question. These essay questions are to be answered in the bluebooks provided, using every other line on one side of each page. **Please return this section of the exam, including the questions, your answers and your notes to the envelope once you are done answering the essays.** Once you have placed the essay section in the envelope, you may not go back to it. **NOTE:** You will not have access to Part I during the final hour of the exam. Now you may remove the Multiple Choice section.
 2. **Part II** consists of 30 multiple choice questions, each counting for 1 point for a total of 30 points, to be answered in the final hour of the exam period. Select the best answer for each question. Correct multiple choice answers are to be marked 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 student exam number 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, all examination papers -- including the Part II ParScore Test Form, bluebooks for Part I, the examination questions, these Instructions, and all notes -- must be placed back in the exam envelope at the end of the examination. Failure to return all materials will result, among other sanctions, in a failing grade of “F” for the course. **Do not** seal the envelope.

6. After all that: relax and have confidence in your abilities.

PART I

ESSAY #1

(Suggested time: One hour)

Delta Construction Co. was engaged in a road construction project at the Solona River, which is located about 10 miles east of Junction City. The new road will allow commuters from the quickly developing suburbs around the Solona River easier access to Junction City. Part of the project envisioned a new and wider bridge over the river. Therefore, as a part of the project, Delta had to demolish the old, two-lane Steadman Bridge which crossed the river. Delta had prepared to destroy the bridge by the use of explosives.

Prior to firing the charges placed in abutments of the bridge, the newspapers, television, and radio stations were notified of the event. Peter, a cameraman for television station WJC, was assigned to photograph the demolition for the evening news. While the day had started as clear and bright, dark clouds began to gather, promising the possibility of thundershowers. Delta had arranged for traffic to be diverted so that no one (other than authorized Delta employees and invited members of the media) would be allowed within a half mile of the bridge. Delta personnel with large red flags created a barrier for the interested people who came to watch the blasting.

Prior to Peter's arrival at the scene, Delta's foreman in charge of the blasting had briefed other news personnel and camera operators as to the procedures to be used in firing explosive charges placed in the bridge abutments. Specifically, he told them that he would blow a whistle and wave a large red flag over his head right before the explosion so that they could make sure their cameras were ready. Delta's foreman also warned the media people present that they really should be about 500 yards away from the bridge and ideally should stay with him in a near-by observation tower to observe and film the blast. He further told them that if they were any closer than 500 yards they needed to stay behind their vehicles and use the vehicles as shields "just in case something happens."

Peter had overslept and so arrived too late for that briefing, but he did talk with his news colleagues at the scene who had selected a spot approximately 400 yards west of the bridge to set up their equipment. One of the other camera operators from rival station WGGU told him "No big deal. So you missed the routine briefing about get ready at the whistle and red flag, and then watch out for noise and falling rocks and stay back from the bridge and blah blah blah. We've all covered demolition blasting before and you should know the drill." Peter then decided to set up his equipment approximately 10 feet closer to the bridge than the crew from WGGU.

Peter had rested his camera on the front hood of his car and called back to his friends at WGGU to ask if they had a good view. One person said that they did. For about five minutes all of the news media personnel just stood around waiting for the signals from the foreman. As they were waiting, the clouds above became darker and darker. Suddenly a loud clap of thunder filled the air and a huge bolt of lightening ripped across the sky. The lightening hit one of the bridge abutments that contained explosives and, obviously, exploded them, setting off a chain reaction of explosions all over the bridge. The explosive blasts came unexpectedly and about one minute before Delta's foreman was ready to give the appropriate signals. With all the noise going on at the bridge, Peter went to grab his camera, but stumbled and broke his foot. Suddenly, a portion of the debris

from the bridge was propelled to the area where Peter was prone on the ground in front of his car. The fragment struck Peter on his other, un-broken leg, severely injuring his other leg.

Based on the foregoing facts, please discuss the chances of success Peter will have if he sues Delta (and appropriate Delta personnel) for strict liability for his personal injuries from the blast.

END OF ESSAY #1

PART I

ESSAY #2

(Suggested time: One hour)

The basic theme of Torts is “will we create liability when defendant’s action results in plaintiff’s harm”? Liability is usually based on some notion of fault or responsibility by the defendant and we thus impose on the defendant the obligation to compensate the plaintiff. Because the compensation is compelled by the state, tort law works as a deterrent to unacceptable behavior. Recent decades have seen a proliferation (and often crowding) of population, products and services. While plaintiffs (and their advocates) have pushed for expansion of liability, other groups (such as medical service providers, insurance companies, manufacturers) have pushed for restrictions on liability. These two sides represent the polar opposites of “tort reform” whereby groups lobby legislatures to pass statutes that in some way change existing tort common law. Of course, “reform” is in the mind of the reformer.

Should tort law concerning products liability be reformed or changed? Should we continue the expansion of liability championed by the California Supreme Court by distributing liability to those with the “deepest pockets” (whether their own or those of their insurance company)? Should we limit lawsuits by emphasizing more personal

responsibility and save the court system only for those who are substantially hurt? Should we seek some sort of middle ground of recognizing liability but limiting the ability to recover, such as placing a ceiling cap on damages (or even, horrors, attorney's fees) for certain types of actions?

Consider the following observations from various legal scholars concerning "tort reform":

#1 - Sen. Robert Kasten (R-Wisconsin), 1992

There is a strong and widespread feeling that personal injury lawyers are wicked and are making too much money. The dollars and the resources that come from, particularly, products liability litigation verdicts are being siphoned off to people who earn a living off the victims. The average American is confronted with a civil justice system for the first time that seems to work better for the attorneys than for their clients. The trial lawyers are treating America to a festival of falsehoods against product liability reform. It is a carnival of lies for an agenda that is seriously harmful to our national interest.

#2 - William Matsikoudis

Capping punitive damages raises a question whether reduced deterrents to reckless behavior are outweighed by the benefits to business and the alleged benefits that trickle down to consumers in the form of reduced prices. Those who benefit most from the legislation are those who behave with "actual malice." Those who are clearly harmed are the victims of such acts. The greater risk that is created by the cap on punitive damages is that immoral companies will produce products which they know may cause injuries because it is cost efficient to bypass safety measures. Punitive damages frustrate diabolic economic equations by putting manufacturers on notice that indifference to human life is unacceptable and will be punished severely. The cap on punitive damages allows manufacturers to calculate the cost of the unlikely punitive award with greater accuracy and less deterrence, thus increasing the probability that companies will cut costs in manufacturing with an indifference to the consequences.

#3 - Paul H. Rubin and Joanna M. Shepherd

In both products liability and medical malpractice cases, since both defendant and plaintiff are often in a pre-injury contractual relationship, potential victims pay for potential damage payments in the form of higher prices. As prices increase, consumers

become less willing to pay for the goods and services covered by tort law. And because many of these goods and services would reduce risk, increasing tort liability actually leads to increased, not reduced, accident risk. In addition, unpredictable and high liability costs make it difficult or expensive for potential injurers to obtain insurance for their own liability. If liability insurance becomes very costly or is unavailable, suppliers will decide to stop supplying the goods and services altogether. Again, if these goods and services are risk-reducing, increasing tort liability may increase accidents.

#4 - *Sandra F. Gavin*

Nineteenth century tort law protected the interests of defendants. The principle of caveat emptor as well as the doctrine of negligence protected the merchants. Social values as well as economic policies supported the pro-merchant era, and it was not until the middle of the twentieth century that protectionist attitudes toward defendants involved in product manufacturing changed. Strict liability in tort evolved during a time when three people were killed every hour of every day from household hazards: color television sets routinely caught fire; unglazed glass doors and walls sliced through vital organs; hot water vaporizers reached scalding temperatures. In 1970 the President's Commission on Product Safety reported that some 20 million Americans were injured each year as a result of incidents connected with consumer products. The "original tort reform" of the 1960s and 1970s promoted social justice and product safety, evolving to rectify the harsh doctrines that barred consumers from recovery. The "current tort reformers" are engaged in stealth reform, moving the debate to the political arena. Playing on public fears of ever-elevating costs, the stealth reformers have incited fear that a rash of lawsuits will leave Americans without access to convenient or life-saving products. The fear-mongers prey on Americans who value self sufficiency, calling for a return to the days of personal stoicism where the public is cautioned to refrain from filing lawsuits.

Use the foregoing dialogue and your understanding of the purposes of tort law as a starting point. (Please ignore any Constitutional questions concerning the role of the judiciary and the legislature, or on federal pre-emption of particular causes of action.) Based on the above, and using examples as necessary, please analyze and discuss whether products liability law needs to be reformed and, if so, how it should be reformed.

END OF ESSAY #2