

FALL 2007 FINAL EXAMINATION

TORTS I - SECTION LS3 - MICHAEL ZAMPERINI

NOVEMBER 30, 2007

1. You have two (2) hours for this examination.
2. This is a **closed** book examination.
3. This examination contains two parts: an essay **and** objective questions.
 1. **Part I** consists of one 60-minute essay question. You must begin with the essay section. This essay question is 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 answer sheet and your notes to the envelope once you are done answering the essay.** 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 to be answered in the final hour of the exam period. Select the best answer. 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 # 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. Unless the question indicates otherwise, answer using torts principles of general application.
6. Unless otherwise indicated, assume that the appropriate statute of limitations for all causes of action is three (3) years.
7. 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.
8. Relax and have confidence in your abilities.

PART I (1 hour)

[THIS PART CONTAINS ONE ESSAY QUESTION]

It was a dark and stormy night. Annie was visiting her friend Barney and the two of them were playing a friendly game of poker.

Annie looked out the window at the pounding rain and said, "All that water makes me thirsty. Do you have any juice in the refrigerator?" Barney looked up from studying his cards and said, "Top shelf on the right." Annie got up and went to his kitchen. Just as she reached for the light switch, Barney called "Watch out for the overhead light!" Barney's warning came too late, since when Annie flipped the light switch the overhead lamp vibrated and fell on her head, knocking her to the floor. She cried out. Barney ran to the kitchen and helped her up. "Sorry," he said, "but that light has been wobbly and loose for the last few months. I told my landlord Chase about it and he keeps promising to fix it but just hasn't gotten around to it." Annie rubbed her head and said "I've really got a headache. Do you have any aspirin?" Barney said he did not.

Annie told Barney she was going home, but would stop by the Drug Store several buildings away. She put on her raincoat and grabbed her umbrella. Once outside the storm was so fierce that the wind tore the umbrella out of her grasp. She quickly reached the Drug Store and went inside. She asked Eddie, the check-out clerk, where to find the

aspirin and he pointed to the right. She turned right and started walking down the aisle. Suddenly, she stepped on a piece of pizza on the floor and slipped, losing her balance. She fell to the floor with a crash, twisting her ankle. She whimpered with pain grabbing her bruised ankle.

Eddie ran up and asked, "Are you OK? Do you want me to get something to bandage your ankle?" She nodded affirmatively and he went to get a wrapping bandage. Unknown to Annie, Eddie had deliberately placed pieces of pizza at various places on the Drug Store floor. He thought that if patrons slipped and fell that they would be hurt and thus need to purchase more medical supplies. Eddie was paid on a commission basis, and so the more of Drug Store's merchandise he sold, the more money he would make.

Eddie sold Annie both the bandage and the aspirin. She quickly bandaged her ankle and swallowed a few aspirin. Pulling her raincoat tight around her, she limped back into the rain. She wondered if she would be able to walk the two miles to her apartment. As luck would have it, her friend Flora was driving past the Drug Store. Annie waved frantically and Flora stopped her car. Annie opened the front passenger door and Flora's 13-year old daughter, Glenda, jumped out of the seat and said, "I'll get in back. I've got to make some phone calls to my friends." Glenda opened the back door and was punching in numbers on her iPhone cell phone as she jumped in. Annie fell into the front seat and closed the door. She gratefully thanked Flora for a lift and told her about what had happened that evening. "You poor dear," Flora said, lighting up a marijuana cigarette and inhaling deeply several times. "Here," she said passing the "joint" to Annie, "take a couple of hits on this and try to relax." Annie declined and Flora put the cigarette back in her mouth and stepped on the car's accelerator. Flora said, "Let's see if we can get you home quickly," as she increased her speed well beyond double the posted 25 miles per hour limit.

Flora sped through the rain and soon came up behind Henry's truck. Henry was driving at the speed limit and was hauling concrete blocks to a construction site.

Suddenly one of the concrete blocks from Henry's truck came crashing through Flora's windshield. The three occupants of the car screamed as Flora lost control of the car and crashed into a building. The force of the impact threw Annie, Flora and Glenda from the car, scarring and bruising their limbs and knocking them unconscious. The crash also apparently ruptured the fuel tank of Flora's automobile and gasoline from the fuel tank spilled into the street. The storm momentarily abated and all was quiet.

Meanwhile, Igor had seen Flora's car swerve and crash. Taking advantage of the break in the rain, he ran to where the three females were to see if he could help. Before he could reach any of them, however, the storm suddenly started again with a gigantic clap of thunder and a jagged lightning bolt ripping through the sky. The lightning hit directly in the spilled fuel, igniting a rag on the ground. The area was ablaze with fire that quickly jumped to Igor and caught his clothing on fire. He screamed and fell to the ground, trying to smother the flames that were burning him. He extinguished the flames but fainted from the terror and pain of being burned.

The sound of the lightning awakened Annie. She watched in horror as the foregoing events happened to Igor. She then noticed that Glenda's iPhone cell phone had fallen right near her. She picked it up, and dialed "911" for help. Within seconds an ambulance arrived and medical personnel tended to the wounded characters.

Based on the foregoing series of unfortunate events, who is liable to whom for what torts, and what defenses, if any, can the potential tortfeasor raise?

[END OF ESSAY QUESTION]