

LAW 7103-03, TORTS I

FINAL EXAMINATION, FALL 2008

Prof. Tom W. Bell

Friday, December 19, 2008, 1:30 p.m. to 4:30 p.m.

Please write your exam number here: _____ and turn in this exam with your answers. If you fail to turn in your exam you may forfeit some or all of your grade.

This exam consists of 33 multiple-choice questions and two essay questions. The multiple-choice section is closed book and counts for 40% of your grade for this exam. You have 60 minutes to complete that section, or an average of 1.8 minutes per question. Indicate the one best answer to each multiple-choice question by filling in your Scantron sheet as directed. Even if you finish the multiple-choice questions early, you may not start on the essay section until directed to do so.

The essay section is partial open book. You may use your casebook, any material that I handed out for the class, and any notes that you or your study group prepared. You may not use other materials, such as nutshells or commercial outlines. The essay section counts for 60% of your grade for this exam and you have 90 minutes to complete it. You may not begin working on the essay section until directed to do so. Because each essay question counts for a particular percentage of your grade, I advise you to allocate your time accordingly. Also, before you begin writing any essay answer you should: 1) read the question carefully; 2) think about exactly which issues you need to address; and 3) outline your answer. Good organization and good analysis almost always go hand-in-hand.

Write on only one side of each page, on every other line. If you use more than one bluebook, please number the booklets so that I can easily follow their intended sequence. Please write as clearly as possible. I cannot grade what I cannot understand.

Unless otherwise indicated, all events described below take place in a generic common law jurisdiction.

If you have any procedural questions about taking this exam, please contact the Registrar. If you think it necessary to assume an unstated fact in order to answer a question you may do so, but you should clearly indicate that you are making an assumption and briefly explain why you consider it reasonable to do so.

Do not turn the page until told to begin the exam.

Please write your exam number here: _____ and turn in this exam with your answers.
If you fail to turn in your exam you may forfeit some or all of your grade.

Multiple Choice Questions

40% of exam's total grade
(maximum time: 60 minutes, or 1.8 minutes/question)

[redacted]

Please write your exam number here: _____ and turn in this exam with your answers.
If you fail to turn in your exam you may forfeit some or all of your grade.

Essay Question 1

30% of exam's total grade
(maximum time: 45 minutes)

While using a walk-up ATM on the exterior wall of one of Bankco's buildings, Vera was struck by an automobile driven by Denny, causing injuries to her leg that ultimately led to its amputation. Denny had been using Bankco's drive-through ATM, which was so oriented as to have cars using it point directly at the ATM that Vera had been using. Cars such as Denny's were supposed to turn sharply before exiting onto a public street.

Denny testified that his car malfunctioned as he pulled away from the drive-through ATM, causing it to suddenly accelerate toward Vera and leaving him no time for him to steer away or give warning. Nothing but a painted line divided the walk-up ATM from the pavement used by vehicles using the drive-through ATM.

Because Denny is insolvent and uninsured, Vera has not bothered suing him. Instead, she has sued Bankco on grounds that it laid out its ATMs in a negligent manner. Although Bankco's facilities complied with applicable zoning and building codes, Vera has discovered that other banks often place traffic barriers between pedestrian ATMs and adjoining roadways. She has not, however, discovered evidence of any similar pedestrian-auto accident at the Bankco location in question.

Immediately prior to receiving her injury, Vera had withdrawn \$200 in cash from her Bankco account. In the confusion following her injury, someone evidently stole that money. The thief was never located. In addition to the injuries caused to her leg, Vera seeks to hold Bankco liable for the theft of that \$200.

Assess the merits of Vera's tort claims against Bankco.

Essay Question 2

30% of exam's total grade
(maximum time: 45 minutes)

As an employee for the highway department, Perez drove a truck pulling a flashing arrow sign which, when it operated properly, directed traffic around slow-moving construction equipment. While so employed one evening, Perez noticed that the sign had stopped working. He stopped the truck to repair the sign by reconnecting some wires that had jiggled loose, as they often did when the sign passed over bumps. At that moment Lerma, who was driving his car on the highway behind Perez, drove into the sign. The impact of the crash seriously injured Perez.

Perez pressed negligence claims against both Lerma and the sign's manufacturer, Signco. Lerma testified that he had been distracted by a bee that had suddenly flown into his car through an open window and landed on his arm. Being allergic to bee stings, Lerma had naturally regarded the bee as dire threat to his life and had focused his attention on carefully brushing it off. As for Signco's fault, Perez argued that he would not have stopped his truck and been struck if the sign had not yet again malfunctioned.

Assess the merits of Perez's tort claims against Lerma and Signco.