

LAW 7115-03, TORTS II

FINAL EXAMINATION, SPRING 2009

Prof. Tom W. Bell

Friday, May 15, 1:00 p.m. to 4:00 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 an essay 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.

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Multiple Choice Questions

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

[redacted]

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Essay Question 1

40% of exam's total grade
(suggested time: 60 minutes)

Suppose that you work as a junior associate at a law firm under the direct supervision of Joy Billings, a partner. One day she walks into your office with a grin and says, "I've got a doozy for you this time! As you know, our firm has the movie star, Patricia Silverscreen, as a client. Silverscreen recently had a falling out with the tax-exempt organization, People Against Consuming Animals ('PACA'). She is thinking about bringing suit against PACA and wants our advice. I'll brief you on the facts so that you can write me a memorandum."

"For many years, Silverscreen worked closely with PACA supporting its mission: ending the human consumption of animals. She claimed that she fully supported its goals and had long followed a strictly vegetarian diet. Their relations soured earlier this year, however, when PACA protested against a movie in which Silverscreen was starring, *The Love Chef*. PACA claimed that the movie glorified meat eating, an accusation that Silverscreen hotly denied. We need not trouble ourselves with the merits of that dispute, though; it matters only that things got very ugly between the two."

"PACA member-volunteers began marching back and forth in front of Silverscreen's home, carrying signs reading, 'Silverscreen has blood on her teeth!' and 'The Love Chef Hates Animals!' We helped her get a restraining order to stop that picketing, but PACA didn't give up. One of its member-volunteers dug through trash she'd thrown out, found remnants of chewed meat, and ran DNA analysis on the saliva. PACA thereby discovered that Silverscreen, contrary to her self-proclaimed vegetarianism, had privately been eating t-bone steaks and veal."

"PACA then used Silverscreen's name and image—without her permission, of course—in a new 'anti-hypocrisy' campaign. The campaign includes posters that read, "When stars lie, animals die. Patricia Silverscreen and others strike humane poses while they secretly feast on the flesh of innocents. Help end the hypocrisy. Fund PACA." The posters, which PACA posted throughout Hollywood and other areas of the country, include a picture of Silverscreen cartoonishly manipulated to make it appear as if she is taking a bite out of a live, bleating lamb, the blood dripping from her smiling mouth."

"Ms. Silverscreen wants to know what legal rights and remedies she has against PACA and its member-volunteers under the law of torts. Please write me a memorandum answering that question."

Essay Question 2

20% of exam's total grade
(suggested time: 30 minutes)

Suppose that you work as a legal aide to state representative, Harley Motormouth. The Supreme Court of your state recently affirmed a decision finding that a funeral home—even one that fully complies with all applicable zoning, health, and safety regulations—may constitute an actionable nuisance if its neighbors show that, merely due to its proximity to properties where they work or live, the funeral home "has a depressing influence on them, as it would any normal person daily confronted with so salient a reminder of life's all-too-brief span."

"That just doesn't seem right," Rep. Motormouth tells you. "We can't let mawkish sentimentality get in the way of legitimate—indeed, *essential*—businesses. It would be different, of course, if the plaintiffs had shown that diseases or noxious odors were crossing from the funeral home's property onto their own properties—then there would be a clear-cut case of something like trespass. I'm even willing to concede that unpleasant sounds, such as the loud wailing of mourners, might support an injunction. Here, though, the offense was entirely in plaintiffs' own minds!"

"I'm thinking of sponsoring a bill that will reverse our Supreme Court's decision and restrict nuisance claims to cases where inherently offensive physical substances or sounds cross from the defendant's property onto the plaintiff's. I worry, granted, that such a statute would not only rule out nuisance cases such as the one recently decided against the funeral home, but also cases alleging that a defendant's activities attract too many or the wrong kind of people to a neighborhood. Perhaps that marks a fatal flaw to my proposal; I'm still not sure. At all events, I want you to write me a short memorandum analyzing the various pros and cons of reforming nuisance law as I've described."