

**TORTS EXAMINATION  
PROFESSOR GILLES  
APRIL 2002**

1. This examination consists of two parts. Each part is worth half of your grade. Part One consists of 26 multiple choice questions. Part Two consists of one **long** essay question.
2. You have 2 hours and 20 minutes to take the exam. In addition, as explained in the multiple choice instructions, you will have a 5 minute “objection period” to be used solely for objecting to multiple choice questions
3. Do not take the examination apart. Return it in its entirety at the end of the examination.
4. Make sure that you put your examination number in the space provided below and on the scantron card.

Good luck.

***EXAMINATION NUMBER:*** \_\_\_\_\_

***Objections:***

## PART ONE - MULTIPLE CHOICE

### PART TWO - ESSAY QUESTION

#### INSTRUCTIONS:

1. *Part Two consists of one long essay question. Part Two counts for one half of your grade.*
2. *The page limit is 7 bluebook pages (a “bluebook page” is one side, writing on every line). **Anything you write in excess of 7 pages will be ignored.** Do not write in the margin.*

#### QUESTION

John Skell suffered serious head injuries when he lost control of his motorcycle after striking debris on a farm path. As a result of this accident John suffered brain damage; his \$5,000 bike is a write-off; and he has lost his job as a micro-biologist.

John was riding his motorcycle on a private path on a farm owned by farmer Libok. Libok had never given permission for the riders to be on his property and had posted “NO Trespassing” and “Private Path – No Entry” signs all around the farm and on the path. Early in the morning Libok was walking around his property when he noticed a section of fence had blown down the night before and was partially blocking the path. He pulled the fence post off the path, but, tiring, decided to leave the rest of the debris (including smaller parts of the fence post) on the path until later that day.

Later that morning, John and two of his friends took the day off work and rode their bikes onto Libok’s farm. As John drove along Libok’s path at 45 miles per hour his wheel hit the fence debris, he lost control and was thrown from his bike suffering serious head injuries.

At the time of the accident John was wearing a helmet designed and manufactured by AGV. John had purchased the AGV helmet in pristine, brand-new condition (unworn, unaltered and still in its unopened original box) at a yard sale from his neighbor Suzie Sellig. The helmet contained a warning label affixed by AGV to the inside of the helmet stating (in large bold print) that **“To be safe, wear your helmet at all times. NO HELMET, including your AGV helmet, can protect the wearer against all impacts.”** John’s head injury has caused memory loss and John cannot recall if he ever read this warning. His only recollection is that “I thought if I wore my helmet I’d be safe.”

Experts will testify to the following:

- U.S. Department of Transportation only requires helmets to protect the head in crashes at speeds of 15-20 miles per hour. The AGV helmet exceeded this standard and AGV’s own impact tests showed that it provided significant protection to the wearer in crashes at speeds of 20-25 miles per hour (although less protection at speeds of 25-30 miles per hour, and no significant protection at speeds over 30 miles per hour). AGV claims that the intended use of

its helmet is to protect the head in low speed (under 25 miles per hour) crashes.

- no motorcycle helmet marketed today can provide any significant protection to a wearer who crashes at speeds of over 30 miles per hour.
- One company, New Undertakings (NU), is in the process of trying to design an alternative helmet (which extends down the neck). Although not yet built and tested, the NU helmet should prove capable of providing significant protection in crashes at speeds up to 30–35 miles per hour, and some protection at speeds up to 40 miles an hour. However, the NU helmet design significantly reduces visibility (since the wearer cannot freely turn his/her neck) and cost estimates for the new design are projected at \$150 per helmet (compared to the current cost of \$100 per helmet).
- It is blatantly obvious to all motorcycle safety experts (and indeed anyone who has witnessed a motorcycle crash) that no helmet (however designed) can provide any significant protection from death or brain injury in crashes at speeds of over 40 miles per hour.

**John has filed several claims, which you should discuss:**

1. a **negligence claim** against farmer Libok. (**You may presume** that Libok concedes causation and harm, and you need only discuss duty and breach)
2. **products liability claims** against (a) Suzie Sellig and (b)AGV. John’s product liability claims allege that the helmet was **defectively designed** and had a **defective warning**. (**Only discuss liability against Sellig and AGV under products liability, not negligence or contract or any other theory**).

**Do NOT discuss affirmative defenses to any of these claims.**

**The State of Capital** (in which this accident occurred) follows the majority position on all issues, except that:

- on landowner liability, Capital follows the traditional approach of predicating a landowner’s duty on the nature of plaintiff=s status on the land; and
- on the issue of **design defects** in products, Capital has recently adopted the position of the Third Restatement of Products Liability.

THE END

