

**TORTS EXAMINATION
PROFESSOR GILLES
MAY 2003**

1. This examination consists of two fact patterns. The first fact pattern is followed by series of 4 short essay questions. The second fact pattern is followed by one long essay question. Each part is worth half of your grade.
2. You have 2 hours and 30 minutes to take the exam.
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 on this exam AND on the bluebook(s). Write "Gilles: Torts Sp. 2003" on the bluebook(s).
5. **Obey the page limits.** A "bluebook page" is one side, writing on every line. **Anything you write in excess of the page limits will be ignored.** Do not write in the margin.

Good luck.

EXAMINATION NUMBER: _____

Moaning Lisa's Fact Pattern

Despite the fact that it was her 23rd birthday, Lisa found herself sitting in Professor Seymour Skinner's Torts class at the H.J. Simpson Law School, a privately-owned school in downtown Springfield. She was bored and annoyed. Lisa amused herself in Skinner's class by drawing in her notebook a humorous and very good caricature of Professor Skinner and writing underneath it, "Professor S: a drunken idiot at work." Lisa knew that this was false, but wrote it anyway.

Two weeks later, Lisa loaned her notebook to a fellow law student, Bart, who had missed several classes. "Copy whatever you want," said Lisa. Bart leafed through the notebook and saw the caricature of Professor Skinner. Amused, Bart made 10 copies of the caricature and posted them around the law school much to the amusement of all students. Professor Skinner caught Bart as he put up the last copy. When confronted by Skinner, Bart fingered Lisa as the offending artist.

Late that same afternoon, Lisa returned home from school and found that her faithful pet raccoon, Scratchy had escaped from his cage (despite the fact that Lisa had taken every possible precaution to prevent his escape). Lisa searched her yard and, not finding Scratchy, proceeded into the neighboring yard owned by the Flanders, who were not home. Lisa and her friends often cut across the Flanders' yard on the way to the grocery store, and although the Flanders had never given Lisa permission to be in their yard, they had seen her and never objected to these frequent short cuts in the past.

As Lisa was searching the Flanders' yard, Lisa was severely injured when she fell into an old swimming pool that was partially covered by several years of rotting leaves. There were no signs posted warning visitors about the pool, but it was still visible to persons in the yard during daylight hours. When Lisa entered the Flanders' yard, it was still daylight but she didn't notice the pool because she was distressed about Scratchy. She was unable to get out and cried for help.

Ralph, who was passing by on the street, heard Lisa's cries and observed Lisa struggling in the pool. Ralph started running towards the pool when he was addressed by Professor Skinner who happened to be standing nearby. "Hey Ralph, I hope that you realize you might be economically liable if you try to rescue her," Professor Skinner said silkily. Startled and confused by this information, Ralph shrugged his shoulders and continued on his way home. Professor Skinner, who was still angry with Lisa for her unflattering caricature, cackled maliciously and likewise departed. After three hours of struggling, Lisa managed to free herself and went to the doctor. Lisa had two broken arms suffered in the fall, and pneumonia contracted from the three hours she had spent in the pool.

When Lisa returned home from the doctor, she was confronted by an angry Marge. Marge had been bitten and severely injured by Lisa's pet raccoon Scratchy (which as you may recall was running loose). Scratchy had never bitten anyone before and in fact is an extremely friendly raccoon. However, Marge had provoked him into biting by pulling his tail repeatedly owing to her extreme hatred of raccoons.

Question 1 (Limit = 2 bluebook pages): Professor Skinner sues Lisa for libel. He cannot prove that he has suffered any actual damages, so has asked for presumed damages. **Assume** that the trial court determines that Professor Skinner is a private figure and that the issue is a matter of public concern (and that constitutional libel protections apply to non-media defendants). What result? Do not discuss defenses.

Question 2 (Limit = 1 bluebook page): Lisa sues Professor Skinner for failing to rescue her. What result? **Only** discuss duty and breach.

Question 3 (Limit = 2 bluebook pages): Lisa sues the Flanders in a State which follows the traditional approach of predicating a landowner=s duty on the nature of plaintiff=s status on the land and where applicable, follows the Restatement (Second) of Torts on the issue of attractive nuisance. What result? **Only** discuss duty and breach.

Question 4 (Limit = 1 bluebook page): Marge sues Lisa. What result ? **Only** discuss duty, breach, and defenses.

Question 5: Motorcyclist Fact Pattern
(Page limit = 6 bluebook pages)

Harley Davidson was riding his motorcycle along a country road at 33 miles per hour when his wheel hit some loose gravel and he was thrown from his bike, landing on his head. Harley suffered serious head injuries; his helmet is a write-off; and his injuries lead him to lose his job as a micro-biologist.

At the time of the accident, Harley was wearing a helmet designed and manufactured by AGV. Harley 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 Mama Cast.

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 you against all impacts.”** Harley’s head injuries have caused memory loss and Harley 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:

- Per mile driven, motorcyclists are 14 times more likely than persons in a car to die in a crash, with head injuries being the leading cause of death or serious injury for motorcyclists (only scuba diving, sky diving and driving ATVs have higher death/injury rates per number of participants).
- U.S. Department of Transportation only requires motorcycle helmets to protect the head in crashes at speeds of 15-20 miles per hour.
- Impact tests show that AGV’s helmet provides significant protection to the head in crashes at speeds of up to 25 miles per hour. AGV’s helmet provides some limited protection at speeds of 25-30 miles per hour, and no 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 on the market today can protect the head in crashes at speeds of over 30 miles per hour. However, one company, New Undertakings (NU), is in the process of developing an alternative helmet (which extends down the neck). Although not yet built and tested, extensive computer simulations have shown that the NU helmet should prove capable of providing significant protection in crashes at speeds up to 35 miles per hour, and some protection at speeds up to 40 miles an hour. 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 \$75 per helmet).

- After Harley's accident and several others, AGV made several changes in its warning, including placing it on both the inside and the outside of the helmet

Question 5: Harley has filed products liability claims against (1) AGV and (2) Mama Cast. Harley's products liability claims allege that the helmet was **defectively designed** and had a **defective warning**. (**Only discuss liability against AGV and Cast under products liability, not negligence or contract or any other theory**). **Do NOT discuss affirmative defenses to these claims**. The State of Capital (in which this accident occurred), has recently adopted the Third Restatement of Products Liability. What result?

******* NOTE: Page Limit = 6 bluebook pages *******

THE END