

TORTS I FINAL EXAMINATION
PROFESSOR GILLES
December, 2003

INSTRUCTIONS

1. You will have **two hours** to complete the exam.
2. This is a **closed book examination**. You may not use any materials during the exam.
3. Make sure that you put your **examination number on all your bluebooks** and indicate the number of bluebooks you are turning in (e.g., 1 of 2). You must turn in your copy of this examination. **Please write your examination number on this copy of the exam.**
4. This examination consists of one question. You have **TEN PAGES** to answer this question. A “page” means writing on **EVERY LINE**, but only on **ONE SIDE** of the page. (You may double the page limit if you write on **EVERY OTHER** line). Only write on the lines; do not write in the margin. Of course if you cross out several lines, you may use an equivalent amount of additional space. **You must obey the page limit. I will not read beyond the assigned page limit. You do NOT need to use all of the space to write a good answer.**
5. Thoroughly discuss all the issues fairly raised by each question. Do not make up any facts or statutes; rather answer the question that is asked.
6. This is a torts examination. Your (or my) personal opinions about the value of any of the activities described in the question are not responsive to the question.

EXAM NO. _____

Good luck.

THE STORY OF THE GOOD SAMARITAN AND THE MAGIC BUS

Otto Mann (“**Otto**” or “**O**”) was driving the Springfield Elementary school bus back to the depot at 3:30 p.m. Friday afternoon when his vehicle stalled in on a curving stretch of Muntz Road, a two-lane highway near the Springfield Gorge Metropark.

"Gnarly dude," Otto remarked to himself. "I guess putting sugar in the gas tank really won't make the bus go faster, man." Otto had tried using sugar as a gasoline additive based on a television cartoon he had seen, but his experiment had indeed caused the bus to stall as Otto's mechanic had warned him it would. However, Otto was not the sharpest pencil in the drawer: he had the intelligence of a twelve-year-old child, even though he was 28 years old.

Otto several times tried pushing the bus out of the roadway onto the berm, but could not budge the heavy vehicle alone. He waited for 45 minutes to flag down help, but no cars came by. Aware that the Muntz Road was seldom-traveled, he decided that he had no choice but to walk six miles back into town for assistance.

Because it would be dark in an hour, he turned on the emergency flasher lights and considered placing in the road as a warning several of the emergency flares that were stored in the wheel well of the bus. Otto was aware that the flares would burn for two hours while the flashers would last for no more than one hour before the battery went dead. However, Otto decided against lighting the flares because Springfield was in the midst of a severe drought and Mayor Quimby had issued an emergency warning cautioning residents from burning of any sort because of the risk of forest fires. The bus was stopped in the road not far from field of dried grasses and underbrush that could easily catch fire if a spark from the flares was blown the wrong way.

Shortly after nightfall, three hours after Otto had left for help, Ned Flanders (“**Flanders**” or “**F**”) was driving down Muntz Road to a sing-a-long at the church. Rounding the curve, he nearly hit Otto’s stalled bus parked in the darkened roadway. The flashers on the bus were no longer operating because the battery had been drained but Ned, who was a cautious driver, managed to stop just in time.

As Flanders sat in his car briefly giving thanks for avoiding colliding with the stalled bus, Homer J. Simpson (“**Homer**” or “**H**”) drove around the curve in his “pink, mean Duffin’ machine.” Homer had just left Moe’s Tavern with his wife, Marge (“**Marge**” or “**M**”), and though he was not intoxicated, he was negligently operating his automobile by driving too fast for the road conditions. Homer saw the bus and car as he rounded the curve, but could not stop and slammed into Flanders’ vehicle.

Blessedly for Flanders, his airbag inflated and he was not injured by the collision (though his car was a complete loss). The Simpsons were not so fortunate. Their automobile, which came to rest within 10 yards of the bus, burst into flames, with Homer and Marge trapped inside. Flanders rushed to their aid, braving the fire to pull out Marge, and then Homer, both of whom he laid down in a safe place nearby. Marge seemed dazed by a blow to the head and was muttering to herself, while Homer was badly hurt and was in a great deal of pain.

Flanders then went back to the Simpsons’ still smoldering car to retrieve a cell phone that he had seen on the front seat, so he could call for help. As he picked up the phone, he noticed a handgun on the floor of the automobile. Realizing that the gun was loaded and fearing that the

gun would explode if left in the heat of the burning car, Flanders retrieved the gun and initially put it in his pocket. He then decided to give the gun to Marge saying, "You shouldn't leave these things lying around."

He then went over to Homer to check on his condition. Unbeknownst to Flanders, the accident had temporarily triggered delusions in Marge's mind, and she perceived Flanders to be a robber who was attempting to hurt Homer. Marge used the gun (that Flanders had given her) to shoot Flanders in the leg, inflicting serious injury. In fact, because Flanders suffered from a rare bone disease, his leg does not heal and has to be amputated.

In the aftermath of these events, Flanders threatens to sue Marge, Homer and Otto. Marge and Homer immediately point out that they are broke (their assets had been quickly exhausted for medical expenses). Flanders, therefore, files suit against **Otto alone**.

In addition to your general knowledge of tort law, research by an associate reveals the following:

1. Springfield applies a traditional approach to cause in fact and has expressly refused to adopt any other approach.
2. Springfield has adopted the Modern Courts' approach to proximate cause (that is foreseeable plaintiff, scope of the risk and intervening causes).
3. Section One of Springfield's Criminal Code provides that

"It is a felony punishable by a fine of up to \$50,000 to possess, control or handle (even temporarily) a firearm within 200 yards of a school or school bus."

This provision was passed as part of a "Safe School Plan Act" in response to an increasing number of gun injuries caused by student on student gun violence in Springfield's schools.

4. Springfield follows traditional common law principles by employing a contributory fault system and recognizing all forms of assumption of the risk.
5. Springfield has adopted joint and several liability.

QUESTION (Limit 10 bluebook pages): Please discuss whether Flanders can make out a negligence claim against Otto. Also discuss whether Otto will have any defenses.

IMPORTANT: Do NOT discuss any other possible lawsuits. In other words, DO NOT DISCUSS whether Flanders has tort claims against Homer or Marge (although your discussion of Otto's liability may refer to the activity of Homer and Marge).

THE END