

TORTS I MID-TERM EXAMINATION
PROFESSOR GILLES
September, 2005

1. *This examination consists of one fact pattern followed by an essay question – use no more than 6 pages.*
2. *You may **ONLY** use the specified number of pages, writing on every line, but on only one side. (You may double the page limit if you write on every other line). **You must obey the page limit.** I will not read beyond the assigned page limit. 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 space. **You have limited space and limited time, so think before you write.***
3. *Make sure that you put your midterm examination number **on your bluebook**. Also **write your examination number** in the space below **on this copy of this examination and on the corner of the examination envelope**. **Turn in your copy of the exam, your greenbook, and your scrap paper inside the envelope.***
4. *This is a closed book examination. You may not use any materials during the exam.*
5. *A good answer should use the IRAC method we studied in class.*
6. *You will have 1 hour of writing time to complete the exam.*

EXAM NO. _____

Good luck.

Essay Question (6 Page Limit):

Hurricane Jack slammed into the small coastal town of Capital with unexpected fury, flooding the streets and trapping many residents who had not heeded Mayor Mays' request to evacuate. **Dan** was surprisingly well prepared for the storm, having purchased large amounts of food and an inflatable "Zodiac" raft that he had tied to the front porch of his home. Dan's plan was to remain in his home unless rising waters forced him to evacuate using the raft. The day after the hurricane hit, the waters in Capital had risen almost as high as Dan's front porch and Dan began planning to leave town on the raft.

Nearby, his neighbor **Jeff** was also becoming concerned. Jeff had not evacuated because his wife, Susan, was seriously ill and had been advised by her doctors not to make the journey unless absolutely necessary. As the day progressed, Susan's condition worsened and Jeff believed that he had to get her to a hospital immediately. Jeff frantically tried to reach the authorities to request that they come and transport Susan. Unfortunately, all land and cell phones were inoperative and Jeff had yet to see a police officer or FEMA worker visit the area.

Desperate, Jeff attempted to make a raft out of things he had around the house but was unsuccessful. Then, looking out his window, he noticed the Zodiac raft tied up to Dan's porch and realized that it was ideal for transporting Susan to a hospital. Unfortunately, Jeff and Dan had a long standing personal quarrel and believing that Dan would never lend him the raft, Jeff decided to take the raft to transport Susan to a hospital. When Jeff told Susan of his plan, she urged him not to do it, reminding him that Dan could not swim and would need the raft to evacuate. "It'll serve the bastard right," countered Jeff. "He breached our friendship long ago, and besides—we could really use a raft to ride around in. I'm getting tired of bikes."

That night, Jeff quietly waded towards Dan's house, grabbed the raft, and cut the rope that tied the raft to the porch, all without entering Dan's property. He climbed aboard the raft and began paddling away from the house, using the oars so as not to alert Dan.

Despite Jeff's precautions, Dan spotted Jeff from his second-floor balcony. Dan shouted, "Stop, you damn looter!," picked up the axe he had been using to cut up firewood, and hurled the axe at the retreating Jeff hoping to hit him. Dan never dreamed he could fling the axe far enough to hit the raft, but amazingly he did. Jeff did not see the axe coming, but when the axe hit the oar only 3 inches from Jeff's hand, it dislocated his wrist. Jeff was so startled that he fell into the water. The raft floated away, and was never seen again.

Meanwhile, Jeff swam home and lacking a raft, was forced to carry Susan on his back through the treacherous waters to safety. He somehow managed this Herculean task and was hailed as a hero. Dan, on the other hand, waited two more days in his home for the water to recede and finally was rescued by Sergeant Simms, pilot of a Capital national-guard helicopter, who spotted Dan waving a white sheet on the roof of his house.

Question: Discuss each intentional tort claim (with any applicable defenses) that could be brought

by Dan against Jeff, and by Jeff against Dan based on these facts. You should apply the MAJORITY approach whenever there is a split in authority.