

TORTS II MIDTERM
Professor Gilles – Spring 2005

INSTRUCTIONS:

Do Not Turn This Sheet Over Until Instructed To Do So.

1. This examination consists of two parts.
 - Part One consists of 20 multiple choice questions (2/3 of your score).
 - Part Two consists of a fact pattern followed by one bar type essay question (1/3 of your score).

2. You have ONE HOUR AND 30 MINUTES to take the exam. In addition, at the end of the examination there will be an additional 5 minute “objection period.” During this 5 minutes, if you think that a multiple choice question was inherently misleading or contained an internal inconsistency, you may so state below [under “Objections”]. Identify the question by number and give your reasons. If I agree with you, I will discard the question completely for the entire class. Even if you feel that a question should be discarded, answer it anyway. You may NOT change any answer OR write anything other than the objection during the 5 minute objection period.

4. Make sure that you put your examination number in the space provided below, on the bar answer sheet and on the scantron card. At the conclusion of the exam, you must turn in all three or you will suffer a grade reduction.

5. You are bound by the Honor Code.

6. Good luck.

EXAMINATION NUMBER: _____

[objections:

PART ONE - MULTIPLE CHOICE**PART TWO – BAR STYLE ESSAY QUESTION**

1. *Part Two consists of ONE essay question.*
2. *Address each issue in a separate paragraph.*
3. *Write your answer ONLY in the space provided on the bar answer sheet. Do not create extra lines. If you write elsewhere (including in the margins) it WILL BE IGNORED. (Of course if you cross out part of an answer, you may use an equivalent amount of space).*
4. *IMPORTANT: you have **limited space** so make sure you plan your answer; address only issues raised by the question; and allocate your space so you can address the claims of **all three plaintiffs**.*

"HIGH STAKES" FACT PATTERN

On the last day of classes at Pinnacle Law School, Sellig, Bilko, and Chrish decided to celebrate the end of the term by visiting Hurtful Downs, a racetrack for thoroughbreds located nearby. Hurtful Downs Racetrack (hereinafter “the track”) is open every day of the year and welcomes persons of all ages, though only adults can place bets on the horses or purchase alcoholic beverages. At the last minute, Sellig learned that her baby sitter was ill but rather than miss the fun, she decided to bring her 8 year old son, Robbie Burns Sellig ["Robbie"] along to the track.

At the track, Sellig, Bilko, and Chrish spent a great deal of time discussing the racing sheet and debating the best method to approach betting on the horses. Bored, Robbie asked for and was given permission to go the track snack stand to get a hot dog. On the way, Robbie noticed a door that was propped open a few inches. The door led to a storage room, not open to the public, where racing gear was stored. Track employees were instructed to close and lock the door, but frequently left it open to save time. Indeed, track security had on three prior occasions found kids in the storeroom pulling racing gear off of the shelves. Through the opening, Robbie could see several racing saddles on wooden saw horses about 6 foot off the floor. Desperate to sit on a real saddle, Robbie entered the storeroom and began carefully to climb into a saddle. Although the saddles appeared to be secured to the saw horses, the saddles were actually loose (pursuant to track instructions) to ease loading and unloading of the gear at race time. As Robbie climbed on, the saddle slipped to the floor causing Robbie to fall to the ground and suffer a broken arm.

Meanwhile, Sellig, Bilko, and Chrish had finally arrived at a "reasonable" methodology for betting on the ponies. On the first race that they managed to get down some bets, Bilko hit a trifecta and won what for him was a large amount of money. As he ran excitedly to the betting window to cash in, he suffered a mild heart attack and collapsed. One of the "hospitality hosts" employed by Hurtful Downs to greet patrons

and give directions saw Bilko fall to the ground from 20 feet away, but was afraid to get involved and walked rapidly in the other direction.

Despite the departure of his friends to the hospital, Chrish continued to purchase glasses of Yale Blue Ribbon Beer and place bets on the ponies. He actually ended up winning quite a bit of money. When the track closed, Chrish walked out to his car happily counting what he referred to as his "property." He was attacked in the track parking lot by three armed men, who pushed Chrish to the ground and grabbed the money. Chrish was not seriously hurt, but suffered facial lacerations and bruises on his arms.

The track parking lot was well lit, but there were no security patrols or security cameras. This was because the parking lot had long been a peaceful place, until a tragic incident two weeks earlier when a woman shot her boyfriend at the end of the racing day in a domestic dispute over the division of "their" winnings.

The armed robbers who attacked Chrish were known to the local police as the "Racetrack Robbers" because, over the past 2 years, they had committed 25 such robberies in exactly the same way at the two other tracks located on the other side of town--always striking as the patrons headed for their cars. The Chrish attack proved to be the first of five robberies at the Hurtful Downs track, which only ended when the robbers were finally apprehended.

Question: Discuss what DUTY if any is owed by Hurtful Downs Racetrack to the three plaintiffs: Robbie (R), Bilko (B), and Chrish(C). (Do not discuss other elements, other potential plaintiffs, or defenses.)

You may presume (so do not need to discuss) that Hurtful Downs Racetrack is liable for all the acts of its employees. Presume that the State of Debt where Hurtful Downs Racetrack is located follows the traditional common law "category" approach on landowners' liability; follows the Restatement (Second) of Torts where we have studied it; and applies the "prior similar incidents" rule.

-- END OF EXAM --