

TORTS II MIDTERM
Professor Gilles – Spring 2004

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 40 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 and on the scantron card.

5. At the conclusion of the exam, you must turn in BOTH the examination booklet and your scantron sheet. The failure to turn in both the examination booklet and your scantron sheet will result in your receiving a failing grade.

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 attached sheet. Do not make up 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 all three plaintiffs.*

FACT PATTERN

A series of unfortunate events have occurred last week in the Toy-Time toy store in downtown Springfield, in the state of Tvland. Toy-Time is the only store in the area to carry the Mega Blaster 2004 – a new computer game which is wildly popular, but almost impossible to find.

On Monday, Homer was shopping in the store. With him was his 6 year old son, Bart. Bart announced he had to go to the bathroom urgently. A Toy-Time sales assistant told Homer that there were no public restrooms in the store, but that kids were permitted to use the employee restrooms, located at the end of the aisle. Homer allowed Bart to go to the restroom by himself.

Bart found the restroom, used it, but as he exited he noticed another door marked “Stockroom – No Admittance - Employees only.” (This sign had been posted after store security had on two prior occasions found kids in the stockroom pulling items off the shelves). The door did not have a lock and the store employees had propped the door a few inches open (as they often did to save time). Through the opening Bart could see a 20 foot stack of “Mega Blaster 2004.” Desperate to hold a Mega Blaster in his hand, Bart entered the stockroom, and began pulling at the bottom Mega Blasters.

Although the stack of Mega Blasters appeared to be securely stacked, they were actually stacked in a loose manner (pursuant to Toy-Time instructions) to ease loading and unloading. As Bart pulled at one, the entire stack fell on top of Bart causing him to suffer a broken arm. Security found him two hours later (after Homer finally notified them that Bart was missing).

On Tuesday, Patty was shopping for her favorite niece Lisa. Overcome with joy at finding the Mega Blaster, she suffered a stroke. A Toy-Time sales assistant saw Patty fall to the floor from 20 feet away, but afraid to get involved, the sales assistant turned and walked rapidly in the other direction.

On Wednesday, Otto (an adult) was leaving the store at 11.00 p.m. after purchasing a Mega Blaster. He was attacked in the Toy-Time parking lot by a gang of youths who robbed him of the Mega Blaster. The youths pushed him to the ground and grabbed the game. He was not seriously hurt, but suffered facial lacerations and bruises on his arms. The lot was well lit, but there were no security patrols. In the prior six months, the following incidents had occurred in the Toy-Time parking lot: two months ago, the bomb squad was called one Sunday morning when an identified box was left in the lot – it turned out to be a harmless; and this month on four occasions empty cars had been broken into and stolen from the lot late in the evening and taken on joy rides by a local gang of youths.

Question: Discuss what DUTY if any is owed by Toy-Time to three plaintiffs: Bart, Patty and Otto. (Do not discuss other elements or other potential plaintiffs)

You may presume (so do not need to discuss) that Toy-Time is liable for all the acts of its employees. Presume that the State of Tvland 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 --