

TORTS EXAMINATION
PROFESSOR GILLES
December 1996

1. This examination consists of two parts. Each part is worth half of your grade. Part One consists of a fact pattern followed by three short questions. Part Two consists of a fact pattern followed by one long essay question.
2. You must obey the page limits given for each question. I will not read beyond the assigned page limit. Write on only one side of the page. You may write on every line.
3. Make sure that you put your examination number on your blue book.
4. This is a closed book examination. You may not use any materials.

Good luck.

Torts Examination
December, 1996

PART ONE - SHORT ANSWER QUESTIONS

INSTRUCTIONS:

1. The fact pattern is followed by three short answer questions. Together they count for half of your grade.
2. It is advisable to read ALL the questions following a fact pattern before answering because points will NOT be given for the, "right" answer given in response to the wrong question.
3. Write on only ONE side of the page. You may ONLY use the following number of pages (writing on EVERY LINE):
 - Question 1 - use only 2 pages
 - Question 2 - use only 2 pages
 - Question 3 - use only 2 pages

If you exceed the page limit, your answer will be ignored. You do NOT need to use all the space to write a good answer. Please start your answer to each question on a new page.

FACT PATTERN

Carl, a Capital University student, was driving to Cleveland. Pam (a fellow student, and a friend of a friend of a friend) was from Cleveland, and asked for a ride home. Carl said, "I'm not

stopping until I get there - I have no time to spare, but if you want a ride, hop right in, O.K. Pam nodded agreement, got in, and they drove off. After some discussion of the weather and road conditions, Carl, hoping to start a romance, put his hand on Pam's leg. Pam, who was traumatized with fear because she had been attacked by a stranger as a child, said nothing. Then Carl began to move his hand up Pam's leg, whereupon Pam stabbed Carl's leg with her metal nail file. Carl, who did not see the blow coming, cried out in pain. Carl thereafter confined his hands to the wheel.

After half an hour of silence, Pam said, "Let me out. Right now." Carl said, "Are you crazy? We can't stop here. We're in the middle of the freeway, its dark and there is no way to safely pull over here. I will stop at the next rest stop." Pam said, "I don't care. I want out, now." Carl responded, "No way." Carl did not stop, but drove for a further twenty minutes until the next rest stop. He pulled in, turned off the car and said, "I'm getting a soda -- you can get out or ride the rest of the way -- whatever you want." Pam said nothing, but as Carl disappeared into the store, she jumped into the driving seat and sped away in Carl's car, leaving Carl irate in the parking lot.

Pam drove to Cleveland. She suffers no physical harm from the incident, but has emotional distress. Carl hitchhiked to Cleveland, where, two days later, he got his car back. It had suffered minor damage.

QUESTIONS:

Question 1. Can Pam state a claim of battery against Carl? Any defenses? Discuss.
(Limit of two pages).

Question 2. Can Pam state a claim of false imprisonment against Carl? Any defenses? Discuss.
(Limit of two pages).

Question 3. What intentional tort claims does Carl have against Pam? Any defenses? Discuss.
(Limit of two pages).

PART TWO-- LONG ESSAY QUESTION

INSTRUCTION

1. The fact pattern is followed by one long essay question. It counts for one half of your grade.
2. You may **ONLY** use 8 pages (writing on every line, but only on one side of the page). If you exceed the page limit your answer **WILL BE IGNORED**.
3. Thoroughly discuss all the issues raised for instance, even if you conclude there is no breach of duty, it would none the less be prudent to discuss causation.

As Mr. Kirk is driving his pick up truck along a country road, he suddenly suffers an extreme

mental attack. Although he has never had any mental illness before, he now suffers a severe and intense delusion - he believes that "aliens" have landed and are attempting to abduct and kill him. He continues driving, weaving erratically along the road as he tires to avoid the laser beams that the "aliens" are firing at him.

Mr. Scottie, who is blind is waiting on the sidewalk to cross the road. Kirk, swerving to avoid an "alien", drives up on to the sidewalk and hits Scottie. Although Kirk is traveling relatively slowly, Scottie is unable to get out of the way because he cannot see the truck. The truck drags Scottie across the ground and pins him against a tree.

Farmer Sulu hearing the collision, runs from his house. He sees Kirk lying dazed on the ground having been thrown from the pick up truck and Scottie pinned against the tree screaming in pain. Farmer Sulu attempts to help Scottie. Sulu realizes that the truck has spilt gasoline on the ground and may ignite at any moment, but nonetheless he tries to push it out of the way to save Scottie. Tragically he slips and falls face down in the gasoline, where he has a severe allergic reaction to the fumes which renders him unconscious.

Fortunately the police arrive and take all three (Kirk, Scottie and Sulu) to the hospital. Kirk has only a few bruises, and after being treated for his mental delusions, is released. Scottie is assigned to the care of Dr. Bones who immediately recognizes that given Scottie's severe injuries, Scottie has only a 20% chance of survival. Scottie is rushed into surgery, survives the operation, but dies two days later. An autopsy reveals that a medical gauze left in Scottie's stomach infected his wounds and led to his death. Dr. Bones and the two assistants he employs (who were the only ones in the operating room) have stated that they have no idea how the gauze got there.

Farmer Sulu's condition also worsens. Although most people would simply suffer a slight headache from inhaling gas fumes, Sulu has a rare allergic reaction which causes him to suffer periods of unconsciousness and to develop agonizing sores on his body. Medical science has never, ever, seen such an extreme reaction to gasoline. After 2 months of suffering bouts of unconsciousness followed by periods of intense pain, Sulu commits suicide - driven to this extreme act by the torment of his injuries.

QUESTION.-

Consider the above fact pattern: what negligence claims can be made out and what defenses are available. (Do not address any intentional tort issues).

Note: the question is set in the fictional, but beautiful State of Scotia. Scotia has adopted a Tort Reform Act that provides that:

In any action to recover damages for personal injury, injury to property, or wrongful death, the culpable conduct attributable to the claimant (or deceased), including contributory negligence or assumption of the risk, shall not bar recovery, but the amount of damages otherwise recoverable shall be diminished in the proportion which the culpable conduct attributable to the claimant (or deceased) bears to the culpable conduct which caused the damages.

Do NOT presume the existence of any other statutes.

You should know that the Supreme Court of Scotia has recently made two decision affecting causation. First, it has announced that it will apply a relaxed causation with full recovery test to cause-in-fact issues in medical cases; second, it has adopted a direct cause theory of proximate cause in all cases. The Court also has a tendency to adopt the Restatement's position on legal questions (where we have studied it).

THE END