

**TORTS MID-TERM EXAMINATION**  
**PROFESSOR GILLES**  
**September 2001**

1. *This examination consists of one fact pattern followed by three questions.*
2. *You may ONLY use the following 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):*

*Question 1 - use only 1 page*

*Question 2 – use only 2 ½ pages*

*Question 3- use only 1 ½ pages*

***You must obey the page limits given for each question. I will not read beyond the assigned page limit. Only write on the lines. Do not write in the margins. Of course if you cross out several lines, you may use an equivalent amount of space. The page limits roughly correspond to the number of points allocated to each question. You have limited space and limited time, so think before you write.***

3. *It is advisable to read all the questions following the fact pattern before answering. Points will NOT be given for the right answer given in response to the wrong question.*
4. *Thoroughly discuss all the issues fairly raised by the question. For instance, unless instructed otherwise, even if you conclude that one element of a tort is not present, it would nonetheless be prudent to discuss the other elements.*
5. *Make sure that you put your examination number **on your bluebook**. You must turn in your copy of this examination. Please write your examination number in the space below **on this copy of this examination**.*
6. *This is a closed book examination. You may not use any materials during the exam.*
7. *You will have 1 hour to complete the exam.*

EXAM NO. \_\_\_\_\_

*Good luck.*

*FACT PATTERN:*

Blooth went to dinner at Chez Tortes, a local restaurant run by Susan (the waitress) and Doug (the chef). Blooth, a large, strong and obnoxious man, was not an easy customer. He repeatedly complained to Susan that the restaurant was too small, too crowded, and the tables too close together. He complained about the food, the wine, and the speed of the service. He called her “a moron” and a “clumsy dolt,” and suggested she “get a job as a hooker.” Several times as Susan leant over him to collect a plate, Blooth would pat her arm or her leg. When Susan asked him to stop, he just laughed.

At the end of the meal, Blooth ordered a glass of scotch. Susan asked if Blooth would like their “special house blend,” and Blooth said, “Yes, I’ll try anything.” Susan, provoked by Blooth’s repeated obnoxious behavior, went to the bar and mixed an invisible laxative with scotch and then served the drink to Blooth. Her purpose, as she later admitted, was to cause him pain and discomfort and “to get him to stop touching me.” Susan also admits that she has “always been slow.” In fact, she has been clinically diagnosed as having the intellectual understanding of a 10-year-old.

Blooth took a large gulp of the scotch, swallowed, grimaced, and shouted, “You idiot – this scotch is disgusting.” He forcefully threw the glass across the crowded restaurant at head level. Blooth did not desire to hit or scare anyone, but was just really angry. Truak, a guest at the next table, only a few feet from Blooth, saw the glass coming, screamed, and ducked just in time. Luckily, Truak was unharmed as the glass flew over his head, missing him by less than an inch, and falling harmlessly to the floor.

Blooth then tried to leave the restaurant. However, Truak’s scream had brought Doug from the kitchen, still holding the knife he had been using to prepare some fish. Doug (a small, slight man) stood calmly and resolutely in front of the door and declared, “You are not leaving here until the police arrive.” For two minutes Blooth and Doug glared at each other, but neither made any move. Susan, however, suggested that, since Truak was not hurt, “we just let the jerk go and get back to work.” Doug stepped aside and allowed Blooth to leave. Unknown to Blooth, he could have easily have left the restaurant at any time using the fire exit at the back.

Late that night at home in his bedroom, Blooth suffered stomach pains caused (unknown to him) by the laxative in his scotch. He tried to reach the bathroom, but wracked by pain, he tripped and fell, cracking his skull. Although the stomach pains passed within five minutes, he had to spend 9 months in hospital recovering from the injury to his skull.

QUESTIONS:

**You should apply the majority approach whenever there is a split in authority.**

**Question 1.** Truak sues Blooth for assault. Blooth consults with you. Blooth wants to argue that he is not liable for assault for two reasons:

(a) the glass missed Truak, so there is no liability because assault requires proof that the plaintiff suffered a resulting contact;

(b) Blooth did not desire to hit or scare anyone, and assault requires proof that the defendant's purpose was to cause a harmful or offensive contact, or apprehension of a harmful or offensive contact.

**Advise Blooth on these two arguments.** For each of his arguments, simply **state if the argument is correct** (i.e., "Blooth is right" or "Blooth is wrong"). If you believe Blooth is wrong, **state the correct legal rule and very briefly apply it to the facts.**

*(Total page limit: your combined answer to both (a) and (b) is limited to 1 page).*

**Question 2. Is Susan liable to Blooth for battery? Any defenses?**

*(Limit of 2 1/2 pages).*

**Question 3. Is Doug liable to Blooth for false imprisonment? Do NOT discuss defenses.**

*(Limit of 1 1/2 pages).*

**THE END**