

TORTS I EXAMINATION
PROFESSOR GILLES
December, 2004

1. *This examination consists of **three essay questions**: Question 1 (8 pages); Question 2 (2 pages and Question 3 (5 pages).*
2. *You must obey the page limits given for each question. A page is one side, writing on every line. 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. I will not read beyond the assigned page limit.*
3. *Make sure that you put your examination number on all your greenbooks and indicate the number of greenbooks you are turning in (e.g., 1 of 2).*
4. *This is a closed book examination. You may not use any materials during the exam.*
5. *You must turn in your copy of this examination. Failure to do so will result in a lowering of your grade. Please write your examination number on this copy of the exam.*
6. *You will have 3 hours and 30 minutes to complete the exam.*
7. *You are bound by the Honor Code*

EXAM NO. _____

Good luck.

“STATUESQUE HOMER” FACT PATTERN

Homer’s 50th birthday was approaching on December 10 and Marge decided to throw a surprise party. She also wanted to honor Homer by commissioning a large, flattering statue of him to be placed in the front yard. Marge wanted the statue to last for at least 25 years – so Homer would see it every morning and evening when he left the house.

Marge contacted a local artist, Bleeding Thumbs Murphy, and learned that she had available to her in her price range, two statue options. The first statue Murphy could create would be approximately Homer-sized (5 and ½ feet tall and 3 feet wide), and made of solid plastic. The plastic statue was quite heavy (like Homer) and cost \$1000, including installation. The second statue was made of hollow steel, and consequently could be made substantially larger than the plastic one. The steel statue was 12-feet high and nearly 6-feet wide. The steel statue cost \$2,000, installed.

Marge, who had a degree in structural engineering, called up Murphy to ask a few questions. Murphy told Marge that the plastic statue, because it was smaller and closer to the ground, was sturdier and more wind resistant. “In contrast,” he said, “the steel statues last forever, unless they fall over. Of course, being larger, heavier, and higher off the ground they are vulnerable to wind gusts.” Murphy informed Marge that “there is a definite trend to using the steel statues here in Springfield,” and that the two other statues installed at private locations in Springfield, were both steel statues. “People just like the look of them—they’re so imposing,” he said.

Marge considered which statue would make Homer happier. Marge did not think the plastic statue was very striking because it was rather small, and frankly did not make Homer look "larger than life." Marge liked the steel statue because she was certain that it would make an impression. In making her decision, Marge also considered the surroundings in which the statue would be placed. She remembered that last year the giant 10-foot high, 4-foot wide plastic Santa that Homer had put up in the front yard had blown over during an unusually strong storm. Marge thought that this was probably a freak event and decided she couldn’t go wrong ordering the same statue that others in Springfield typically used. Marge also remembered that the plastic swing set in her back yard had recently suffered severe damage from acid rain, which commonly fell in Springfield owing to its proximity to the power-plant. For all of these reasons, Marge decided to order the steel statue. She had it installed without any further discussion with anyone.

When the night of the party arrived, the attendance was not as good as Marge had hoped for. This might have been because in the invitation Marge had asked for a \$5 contribution for beer and donuts. With the invitation was an RSVP card which included the following: “Friends: This is Homer’s 50th Birthday and while I really want you to celebrate with us, I have to warn you that things could get out of hand (especially considering what happened last year—don’t get me started!) If you come, we’re not responsible for anything that happens to you. The house isn’t in the best of shape and Homey won’t be either, so you’ll have to excuse us!”

Still, Homer's best friends, Moe, Barney, and Flanders, filled out the RSVP card, sent in their \$5, and showed up. Homer was delighted by the statue and even more pleased to see the large quantities of Duff Beer that Marge had ordered. As the night progressed, Homer began to relive his high school baseball days with Barney and Moe when they played for the Springfield Isotopes. Homer found Bart's gloves and a baseball in the garage and the three of them started playing catch in the front yard. Homer threw the ball high in the air, while Moe and Barney raced after it and negligently jumped up without looking. Moe and Barney simultaneously collided with the steel statue and the force of their combined impacts caused the statue to fall. The steel statue collapsed, injuring Flanders who was sitting in the Simpsons' front yard quietly playing Biblical Pursuit. An ambulance was called for Flanders' whose hand was crushed.

QUESTION 1(Page Limit 8 pages):

Flanders sues Marge for negligence. Please discuss the issues raised by his claim. Also discuss whether Marge has a defense based on assumption of the risk. Do not address any other defenses, intentional tort issues, any special duty issues, or other possible lawsuits in this question.

In addition to your general knowledge of tort law (for this question only) research by an associate reveals the following:

1. The Supreme Court of Springfield has adopted the "modern" approach to proximate cause that we studied in class.
2. Springfield retains all forms of assumption of the risk.
3. Several years before these events occurred, the City of Springfield (which encompasses Marge and Homer's home) had been ranked one of the top ten "ugliest towns in the mid- west." As part of its effort to improve the City's appearance the City enacted the following ordinance:

“BEAUTIFICATION OF SPRINGFIELD ORDINANCE: Any person who seeks to erect a monument, statue or sign greater than 5-foot high in a residential neighborhood must apply for and be granted a permit by the Springfield City Council Neighborhood Beautification Committee. Anyone who erects such a structure without a permit is guilty of a misdemeanor punishable by a fine of \$2,000.”

QUESTION 2 (Page Limit 2 pages)

(for the purposes of this question only, presume these additional facts)

An ambulance rushed Flanders to the hospital. His right hand was so severely injured that there was only a 20 % chance that he would recover any use of the hand. Doctor Hibbert who treated Flanders in the emergency ward, negligently set the cast on Flanders' hand. This error eliminated any chance that Flanders would recover the use of his hand.

Flanders has filed a negligence suit against Doctor Hibbert for loss of the use of his hand (which is valued at \$500,000 because of Flanders' well established career as a concert pianist). Doctor Hibbert concedes that he breached his duty of care and that he was the proximate cause of any harm. However, Doctor Hibbert has moved for summary judgment on the ground that he is not the cause in fact of Flanders' harm.

You clerk for the judge (Judge Sellig) who has been assigned this motion. Your research reveals that Springfield (the state in which the accident occurred) applies a traditional approach to cause in fact, but is considering applying the "quantified loss of chance approach" in medical malpractice cases.

Judge Sellig asks you to explain in detail how each approach would apply to these facts and to briefly identify any policy reasons supporting one approach or the other.

QUESTION 3 (Page Limit 5 pages)

(for the purposes of this question only, presume these additional facts)

Back at the party Homer and Moe, now both very drunk, wandered into the backyard and began to quarrel loudly. Moe, seeking to provoke a fight, called Homer, an “ugly, old has-been.” Irate, Homer threw his heavy pint glass, full of beer, at Moe. Homer wanted to hit Moe, but Homer knew how drunk he was and how bad his aim was, so Homer was substantially certain that he would miss Moe.

Just at that moment, Reverend Lovejoy appeared from nowhere and stepped in to separate them. Homer had believed that he and Moe were alone and did not even suspect that anyone else was present. The glass missed both Moe and the Reverend, but four small drops of beer hit the Reverend on the face, splashing into his eyes. Reverend Lovejoy never saw the glass or the beer coming. However, Reverend Lovejoy was allergic to beer. His eyes began to swell closed and he had difficulty breathing.

At this point Mayor Quimby took charge. Quimby jumped in front of Reverend Lovejoy and ordered Lovejoy to stay in the back yard until another ambulance could arrive. Reverend Lovejoy screamed out that his religious beliefs prohibited him from receiving any medical treatment. “Just let me leave,” he pleaded and started to walk to his car. No one laid a hand on Lovejoy, but in a loud and angry voice, Quimby stated, “Stop right there. If you move I’ll get Officer Wigham over there to arrest you. You need medical treatment and are in no condition to drive – you could crash and hit a member of the voting public.” Believing he had no choice, and still unable to see clearly, Lovejoy complied. After 20 minutes, the reaction wore off and Lovejoy was fine. He suffered no long term injuries from the incident. Then, Quimby relented and let Lovejoy leave. It turns out that Quimby was bluffing and that Officer Wigham was not at the party.

Discuss any intentional tort claims that could be brought by the Reverend Lovejoy. Any defenses? Presume that Springfield follows the majority approach where ever we have studied it.

THE END