

**TORTS I EXAMINATION**  
**PROFESSOR GILLES**  
**December, 2007**

1. *This examination consists of **three questions**. The first fact pattern is followed by one essay question - Question 1 (limit 5 pages). The second fact pattern is followed by **two** essay questions - Question 2 (limit 2 pages) and Question 3 (limit 8 pages). The page limits roughly reflect the points allocated to each question.*
2. *You will have **3 hours and 15 minutes** to complete the exam.*
3. *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 margin. Of course if you cross out several lines, you may use an equivalent amount of space. Likewise, if you only write on every other line, you may double the page limit. I will not read beyond the assigned page limit. You do not need to use all the pages to write a good answer.*
4. *Make sure that you put your final examination number on your bluebook(s); on this examination; and on the outside of your exam envelope. You must place everything back in the envelope and turn it in (that is, your copy of the examination, your bluebook(s,) and your scrap paper).*
5. *This is a closed book examination. You may not use any materials during the exam.*
6. *You are bound by the Honor Code.*

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

*Good luck.*

## THE “SMASHING PUMKINS” FACT PATTERN

### (Question 1 )

Farmer Jasper, an 81 year old, lived alone on a 15 acre farm about 20 minutes outside the town of Springfield. His farm had a large pumpkin field, and in the weeks before Halloween, farmer Jasper’s field had been struck by vandals. From the beer cans left lying around, Jasper suspected that it was some drunken teenagers from the nearby high school, but the vandalism was seriously cutting into his crop, so Jasper decided to stand guard at night to protect the crop. He sat on the steps of the porch surrounding his farmhouse home, with a large cup of coffee and his old shot gun, loaded with pellets.

About 1.00 a.m., through the dark, Jasper saw a group of about ten males (later identified as members of the local high school’s football team), about 30 feet away on the far west side of the field. As they began to smash pumpkins, Jasper jumped up and shouted, “Get off my property.” The youths turned and started to laugh. Three of them took a few steps towards the porch: “Try and make us old man,” said one. Jasper, growing afraid, and hoping to scare the youths, fired a warning shot towards the east – away from the youths. A loud scream pierced the night and the youths ran. When Jasper investigated, he was shocked to find ten year old Bart lying injured on the public road at the east side of the field, hit in numerous places by the pellets from Jasper’s gun. Jasper had no idea that Bart, or anyone else, was there.

Bart had been paid \$5 by the youths to stand on the public road and keep watch. Bart proved a poor lookout: he never saw or heard the confrontation or the shot. Bored with keeping lookout, Bart had placed a can on the fence at the edge of the Jasper’s field and then gathered stones to throw at it. Ironically, just as Bart threw his first stone and stood watching it fly towards the can, he was hit by the pellets. The rock missed the can, went over the fence, and onto Jasper’s land. The stone hit a valve on the irrigation system that watered Jasper’s land. The next morning, the irrigation system turned on, but it failed to turn off because of the broken valve, causing an extensive flood. Half of Jasper’s crop, worth \$500,000, was a total write off.

### **Question 1 (Limit five pages). Please discuss:**

- **The ONE STRONGEST intentional tort claim that Bart can state against Jasper, and any possible DEFENSES to that claim; and**
- **The ONE STRONGEST intentional tort claim that Jasper can state against Bart. Do NOT discuss defenses to that claim.**

**NOTE: The state adopts a minimal approach to intent.**

**THE “NO NEED TO TEST DRIVE” FACT PATTERN**  
**(Questions 2 and 3)**

**Moe Szyslak** (hereinafter “Moe”) had owned and operated a garage, situated right across the street from a busy hospital, for seven years. He catered to medical doctors and nurses who were always in a hurry to get back to work, as the hospital was understaffed. About a year ago, in an effort to attract more customers, he started to offer the “fastest fluid change in the city.” In his ads he promised to change oil, brake fluid, windshield wiper fluid, and charge the battery in 10 minutes (the fastest these services were provided by other garages in the city was 20-25 minutes). His ads even offered a 10 minute guarantee: “In the time it takes you to drink a cappuccino – we’ll have your car in and out – or it’s free!!!” Since Moe instituted the 10 minute service deal, he has seen business really pick up. Customers often tell him that they came to him because of this ad campaign and his speedy service.

One day **Dr. Hibbert**, a surgeon, was on his way to work at the hospital when he noticed his oil light was on. Because Dr. Hibbert had 15 minutes to spare, he pulled into Moe’s garage to have the fluids changed. Moe worked fast draining fluids and replacing others as he worked to try to meet the 10 minute guarantee. Unfortunately, in his haste he forgot to refill the brake fluid. Up until a year ago, Moe had always test driven each car several times around his large lot to make sure that the car was in perfect working order. All other garages in town conducted test drives after changing a car’s fluids as part of the full service. Moe, however, had given up that practice because it slowed him down (taking 10 minutes extra per car) and in all the years he had done it – working on about an average of about 10 cars a day – he had only ever found one car with a problem per year (in each case he had forgotten to fill up either the oil or the windshield wiper fluid.) Since no one had ever complained, when Moe decided to go to the “fastest fluid change” guarantee, he decided to skip the test drive check to speed up the process. In this case, Moe did not test drive Dr. Hibbert’s car. If Moe had taken the car for a test drive the “brake fluid empty” light would have gone on, alerting him to the lack of fluid.

Dr. Hibbert jumped in his car, pulled across the street and into the hospital parking lot. In his short journey, the “brake fluid empty” light never went on, and Dr. Hibbert did not notice any problem with the vehicle. Dr. Hibbert was driving slowly and with all possible care, but as he entered the hospital parking lot, **Ned Flanders** (hereinafter “Ned”) suddenly ran right in front of the car. Dr. Hibbert immediately slammed on his brakes, but due to the lack of brake fluid, they failed and he collided with Ned.

Ironically, Ned was rushing to the emergency room of the hospital. He had been wandering down the street when he was stung by a bee. Ned immediately started to have a severe allergic reaction – his tongue swelled, his throat began to close up, he could hardly breathe, and his eyes swelled closed. Although he had never had a reaction before, he recognized the symptoms and realized that he needed immediate medical treatment, if he were to survive. In a state of panic, Ned ran madly to the hospital, cutting through the parking lot. With his eyes swelled shut, he never even saw Dr. Hibbert’s car and ran right in front of it.

Sadly Ned was killed. An autopsy revealed that he was severely allergic to bee stings and had had a 30% chance of dying if he did not receive treatment for the bee sting within an hour. His grieving widow sues seeking damages for loss of support to her from income from Ned's highly paying job; the emotional distress she suffered from losing her beloved husband Ned; and the expenses of Ned's elaborate funeral.

*In addition to your general knowledge of tort law, research by an associate reveals the following:*

❖ The Supreme Court of Simpsonia:

1. has abolished all forms of implied and express assumption of the risk;
2. has adopted the following statute as to plaintiff's fault:

If a person suffers injury, death, or loss as the result partly of his own negligence and partly as a result of the fault of another person or persons, the amount of damages recoverable shall be reduced in proportion to the degree or percentage of negligence attributable to the person suffering the injury, death, or loss. Similarly, in an action for wrongful death, the relative's recovery shall be reduced in proportion to the decedent's negligence, as set out above.

3. recognizes a wrongful death action for spouses, and not a survival action; and
  4. applies the majority approach on all other matters.
- ❖ The State of Simpsonia as part of its traffic code provides that it is a misdemeanor (punishable by a fine of \$5,000) to drive a car "without fully functioning brakes, tires, or lights."

**Question 2: (Limit 2 pages): Ned's widow (hereinafter "Ned") sues Dr. Hibbert for negligence. Dr. Hibbert files a motion for summary judgment arguing that Ned will not be able to prove the elements of duty and breach. Discuss whether the court should grant or deny this motion.**

**Question 3: (Limit 8 pages): Ned's widow (hereinafter "Ned") sues Moe for negligence alleging that Moe should have "test driven" Dr. Hibbert's car after changing the car's fluids. Please discuss the issues raised by this wrongful death negligence claim, including any defenses. Even if you conclude that one element of the tort is not present, it would nonetheless be prudent to discuss the other elements. Do NOT discuss joint and several liability or proportionate share apportionment.**