

TORTS I EXAMINATION
PROFESSOR GILLES
December, 2008

1. *This examination consists of **three parts**:*
 - *Part One is 20 multiple choice questions (suggested time 50 minutes)*
 - *Part Two is a fact pattern followed by one **short** essay question - Question 1 (limit 2 ½ pages – 3,750 characters)(suggested time 35 minutes).*
 - *Part Three is a second fact pattern followed by one **long** essay question - Question 2 (limit 10 pages -15,000 characters)(suggested time – 1 hour and 50 minutes).*

The time 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.

Part Two: Short Essay Question

BATTLE GROUND GALACTICA FACT PATTERN

(Suggested time 35 minutes)

The most anticipated new video game of the year, Battle Ground Galactica III, was being offered for sale during an exclusive early release event from midnight to 3:00 a.m. at Best Bought Game Store. **Harold**, having already mastered Battle Ground Galactica II, was eager to test his gaming prowess on the new game and planned to be among the hundreds of people lined up at Best Bought for the midnight opening of the store. Unfortunately, Harold's sense of direction was not as sharp as his gaming skills and he became lost on his way to Best Bought. By the time Harold arrived at the store, it was 2:50 a.m. The crowds had left and the shelf that had been full of Battle Ground Galactica III video games at midnight was now empty. Dejected, Harold turned toward the store exit when he heard the instantly-recognizable Battle Ground Galactica theme music coming from an open storage room toward the back of the store. Harold walked toward the music coming from the back corner of the dimly-lit storage room and set his eyes on the last remaining Battle Ground Galactica III video game in the store. The game was turned on, seemingly calling to Harold, and Harold could not resist. Harold entered the room, picked up the game controller and began to play. The game was everything he knew it would be and he lost himself in the battle, hooping and hollering as he was drawn deeper into the game.

Promptly at 3:00 a.m., **Kumar**, the only employee left at that hour, began to lock up the store. He walked toward the back to lock the storage inventory room and as he grabbed the handle of the storage room door and began to pull it shut, Kumar heard a voice cry out, "Die you evil Death Lord scum. I have you in my crosshairs and I will kill you if you come any closer." While a reasonable person would have realized that someone was back there (or at least checked), Kumar who was exhausted from working all night, decided that he was delirious with exhaustion and simply locked the door without checking. Kumar continued to hear shouts and shrieks coming from the storage room as he left the store.

At 6:00 a.m., as the sun rose, a gentle breeze wafted in through the storage room's only window which sat slightly ajar high up on the back wall. Harold momentarily looked up at the window, and then noticed that the storage room door was closed. Recalling that he had not closed the door when he entered the room, he began to worry, but his thoughts were interrupted by the sounds of the game announcing that he had beaten Level 4 and was about to enter the Level 5 final showdown. Two hours later, victory was at hand. As Harold spun around in celebration of his triumph over the Death Lord, he stumbled over a tall tower of storage crates stacked along the back wall. Hearing the crash, the Best Bought day shift manager, who had arrived at the store moments earlier, raced to the storage room, unlocked the door, and flung it open to find Harold lying among the crates.

Question 1: (Limit 2½ pages, 3,750 characters): Can **Harold** make out a False Imprisonment claim against **Kumar**? Even if you conclude that an element is not met, it would nonetheless be wise to discuss all elements of the tort. Do not discuss defenses.

Part Three: Long Essay Question
THE “SLEEP TIGHT, DON’T LET THE BED BUGS BITE”
FACT PATTERN

(Suggested time 1 hour and 50 minutes)

Background Information

Once thought to be eradicated from North America, bed bugs have been making an unwelcome comeback in hotels and homes. Bed bug is the common name for *Cimex lectularius*, a reddish-brown, oval-shaped insect that can grow to a quarter of an inch long. Bed bugs are wingless and survive by sucking blood from a host animal, preferably a human. Bed bugs commonly hide in mattresses, carpets, behind peeling paint or wallpaper, and in crevices in wooden furniture. Bed bugs can wander between adjoining rooms through voids in walls and holes for wires and pipes. They spread to other buildings by stowing away in luggage, furniture, clothing and other such objects when these are moved between apartments, homes and hotels.

The bugs are nocturnal and typically bite people while they sleep, usually just before dawn. Bed bugs bite exposed skin and often leave behind small, red, itchy welts that look like mosquito bites (see below). In a large number of cases, about half the number of people exposed, there is no visible sign of bites whatsoever, greatly increasing the difficulty of identifying and eradicating infestations. Bed bugs are not generally thought to transmit any diseases. The damage (for those who suffer bites) is more emotional than physical. Bites from bed bugs can be treated with corticosteroids or oral antihistamine, and typically clear up after a week to 10 days.



Bed bug (10 x actual size)



Bed bug bites on face

The Lawsuit

For ten years, **Moe Szyslak** (hereinafter “Moe”) owned and operated a 100 room motel (“Motel 5”) - one of only two hotels in Springfield. For the last 2 years, the motel has had a problem with bed bugs. When the problem first surfaced in Spring 2007, Moe hired **EcoLab** to exterminate the three affected rooms (for \$30 a room). This seemed to eliminate the bed bugs, but this spring (March 2008), Moe discovered bed bugs in two new rooms. He again contacted EcoLab who recommended that it be hired to spray every inch of the motel – all hallways,

common areas as well as all the rooms - (a “**building sweep**”), for which the charge would be \$4,500. Ecolab recommended that the entire building be empty for 6 hours after the building sweep because each year across the nation there were a few reported cases of life threatening reactions to the insecticide (these reactions have only ever occurred if the person was exposed within a few hours of the treatment). Ecolab offered a 3 year guarantee (free spraying if bugs returned within 3 years) only on the building sweep (not on a room by room treatment), because with the building sweep that there as only a 1% chance that the bugs would return in that 3 year time frame (while with a room by room treatment the bugs often reappeared or moved to neighboring rooms). However, Moe decided he could not afford the building sweep, so only hired Ecolab to spray the two affected rooms.

As the summer of 2008 progressed, about ten guests per week complained about being bitten by bugs in their room: three guests had even run to the front desk screaming and hysterical in the middle of the night. However, Moe was still unwilling to pay for a building sweep: he knew that many people do not suffer any visible bites at all, and even for those who are bitten, the bites are relatively harmless (just annoying and unsightly). Moe simply ordered three more rooms treated where the bugs had become rampant. Moe also adopted the strategy (which proved very successful) of first trying to convince guests they had been bitten by the mosquitos that were prevalent in Springfield; and, only if this failed, offering to shift them to another room or offering them a coupon for 10% off their next stay (which cost him nothing as he offered it to all guests anyway).

One dark, wet evening in September 2008, **Edna Krabappel**, checked into Motel 5 and was assigned to Room 13 (which opened onto the Motel’s parking lot). Edna (who had a fear of insects) awoke at 3.00 a.m. to find bed bugs crawling over her. Faced with this crisis, her heart started racing, she experienced tunnel vision (that is the loss of any peripheral vision), and, overcome by fear, she ran out of her room into Motel 5’s parking lot and right in front of a car driven by **Dr. Hibbert**, a surgeon, who was just arriving to check in. Dr. Hibbert was driving slowly and with all possible care. When Edna suddenly ran right in front of his car, Dr. Hibbert immediately slammed on his brakes, but was not in time to avoid hitting Edna. Edna was rushed to hospital where she was diagnosed with multiple breaks in each of her legs. Sadly because of her age, these breaks will confine her to a wheel chair for the rest of her life.

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 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.

3. and follows the traditional common law “category” approach and the Restatement Second where applicable.

Question 2: (Limit 10 pages, 15,000 characters): Edna sues Moe for negligence alleging that the Moe is liable for her injuries because he negligently failed to order a “building sweep” to eliminate the bed bugs. Please discuss the issues raised by this negligence claim, including any defense. Even if you conclude that one element of the tort is not present, it would nonetheless be prudent to discuss the other elements.

The end