

TORTS
Mr. Martin
March 10, 2006

Social Security No. _____

MIDTERM EXAMINATION

This is an open book examination. You may use any materials which you have brought with you whether prepared by you or by others. Questions will be weighted equally and you should spend equal amounts of time on each question. Question One consists of twelve short-answer questions which are to be answered in the blanks provided on this white examination paper. Questions Two and Three are to be answered in blue books. Please write legibly and leave a margin on the left-hand side of the page of your blue book or blue books.

Use only your social security number to identify your blue book and this white examination paper. If you use more than one blue book, please be sure that your social security number is on each and number the blue books ("No. 1 of 2," "No. 2 of 2," etc.).

All blue books must be turned in at the end of the examination. This includes blue books which are entirely blank, and also blue books which have been used as scrap paper. Label any scrap blue book with the word, "SCRAP."

* * *

Relax and try to have some fun.

QUESTION ONE

(This question ONE consists of twelve short-answer questions. Write the answers on the blank lines on this examination paper).

SHORT-ANSWER QUESTION ONE. The elements of the tort claim called "battery" are:

1. _____;
2. and _____.

SHORT-ANSWER QUESTION TWO. Plaintiff, a jockey, was seriously injured in a race when another jockey, Daring, cut too sharply in front of her without adequate clearance. The two horses collided, causing Plaintiff to fall to the ground and sustain injury. The State Racetrack Commission ruled that, by cutting too sharply, Daring committed a foul in violation of racetrack rules requiring adequate clearance for crossing lanes. Plaintiff sues Daring for damages. One count of Plaintiff's action is based on battery. The element of Plaintiff's battery claim which is missing or in doubt is:

SHORT-ANSWER QUESTION THREE. The elements of the tort claim called "assault" are:

1. _____;
2. _____;
3. and _____.

SHORT-ANSWER QUESTION FOUR: Pocket, a bank vice president, took kickbacks to approve certain loans that later proved worthless. Upon learning of the kickbacks Dudd, the bank's president, fired Pocket telling him, "If you are not out of this bank in ten minutes, I will have the guards throw you out by force." Pocket left at once.

Pocket sued Dudd for assault. The element of Pocket's assault case that is missing is:

SHORT-ANSWER QUESTION FIVE. The elements of the tort claim called "false imprisonment" are:

1. _____ ;
 2. _____ ;
 3. _____ ;
 4. and _____
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SHORT-ANSWER QUESTION SIX. Well after midnight, the night manager of the Notell Hotel got a call from the Naked City Police Department informing her that Pushkin, a hotel guest, was a terrorist. The caller asked the manager to detain Pushkin for a few hours until the police could secure an arrest warrant. The manager agreed. Assuming Pushkin to be in his room and asleep, she locked the room with a deadbolt that prevented the door from being opened from the inside. Two hours later, she discovered that she had locked the door to Patterson's room instead of Pushkin's. Patterson slept through these events but, when he finds out that he has been locked in his room, he sues the Notell Hotel for false imprisonment.

The element of Patterson's false imprisonment case that is missing is:

SHORT-ANSWER QUESTION SEVEN. The elements of the tort claim called "intentional infliction of emotional distress" or "outrage" are:

1. _____;
2. _____;
3. _____;
4. and _____.

SHORT-ANSWER QUESTION EIGHT. Dumont, a real estate developer, was trying to purchase land on which he intended to build a large commercial development. Perkins, an elderly widow, had rejected all of Dumont's offers to buy her ancestral home, where she had lived all her life and which was located in the middle of Dumont's planned development. Finally Dumont offered her \$250,000. He told her that it was his last offer and that, if she rejected it, state law authorized him to have her property condemned.

Perkins suffered severe emotional distress at the thought of losing her lifelong home. She then consulted her nephew, an attorney, who researched the question and advised her that Dumont had no power of condemnation under state law. Perkins was outraged when she learned that Dumont had lied to her.

Perkins sues Dumont for damages for intentional infliction of emotional distress or "outrage." The element of Perkins's emotional distress claim which is missing or in doubt is:

GO ON TO THE NEXT PAGE

SHORT-ANSWER QUESTION NINE. The elements of the tort claim called "conversion" are:

1. _____;
2. _____;
3. _____;
4. and _____.

SHORT-ANSWER QUESTION TEN. Desperate for money, Peaches pawned her fur coat at Dogberry's Pawn Shop for \$500. Before repaying the loan, Peaches demanded return of the coat so that she could wear it to a party. Dogberry refused to return the coat.

Peaches sued Dogberry for conversion of the coat. The element of Peaches's conversion claim that is missing is:

SHORT-ANSWER QUESTION ELEVEN. The elements of the tort claim called "trespass to land" are:

1. _____;
2. and _____.

SHORT-ANSWER QUESTION TWELVE. Dan was driving his car. The car, not out of control, entered land owned by and in the possession of Peter, without Peter's permission.

Are all of the elements necessary to establish a claim by Peter against Dan present in the foregoing fact pattern?

Yes _____ No _____

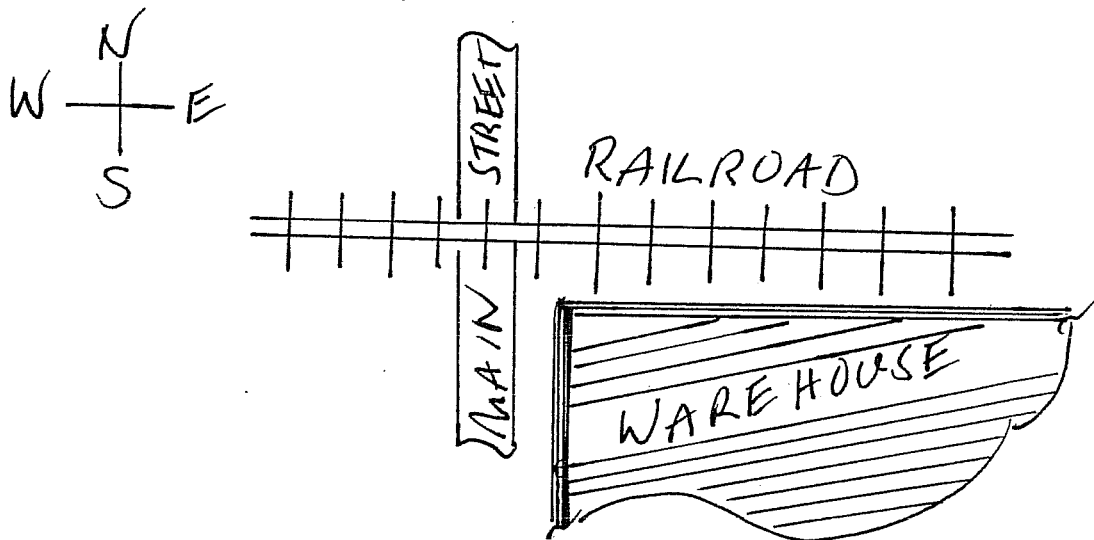
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QUESTION TWO

If you have learned nothing else from the study of Torts in law school, you have learned that violent confrontations between railroad trains and automobiles are still a lamentable fact of American life, with the trains usually the victors.

Mike Mozzarella and Peter Provolone were operating engineers employed at a waterworks project called the Big Swig. Each morning, Mike picked up his friend Peter at Peter's house to drive the two to work. Their route to work was to proceed north through their town, Tastyboro, on Main Street, past the point where Main Street intersects the main east-west line of the Bigmac and Littleneck Railroad at a grade crossing.

The grade crossing is protected by crossing gates, a flashing light signal, and an audible signal, all of which are automatically activated by the approach of a train. At the southeast corner of the grade crossing, however, there is a warehouse five hundred feet long which obscures a northbound driver's view of the tracks to the east. The same warehouse obscures a westbound train crew's view of Main Street to the south, as shown below:



On this particular morning a 113-car freight train pulled by four diesel engines was proceeding westbound. It approached the Main Street grade crossing with its headlight burning, its bell ringing, and its whistle blowing. At a point where the head engine was approximately 60 feet from the grade crossing the fireman (seated on the left-hand side of the cab) saw Mike's car emerge from behind the warehouse. Its front wheels were already on the tracks. The brakeman shouted a warning to the engineer who applied the emergency brakes. The train struck the right side of the automobile and carried it approximately 1250 feet. Mike, who had been driving, and Peter, who had been riding in the front passenger seat, were both killed. The undisputed testimony of all witnesses indicates that the crossing gates were down, the warning lights were flashing, and the audible signal was sounding at the time.

The railroad's safety regulations impose a speed limit of 25 miles per hour on trains in the town of Tastyboro. The locomotive's black box recorder indicates that it was travelling at 37 miles per hour at the time of the collision. The train engineer testified, however, that even at 25 miles per hour he could not have stopped the train in time to avoid the accident.

Peter's widow sued the railroad to recover for her late husband's wrongful death. On the above facts, the railroad sought summary judgment in its favor. What result? Why?

QUESTION THREE

In Grace & Co. v. City of Los Angeles, 168 F.Supp. 344 (S.D. Cal. 1958) the plaintiff ("Grace") was the consignee and owner of 2000 bags of coffee which had been received at the Port of Los Angeles and were stored in a pierside shed awaiting pickup by Grace. The coffee was ruined when the floor of the shed was flooded after an 8-inch water main pipe leading into the shed burst. Grace sued the City of Los Angeles, claiming that the City knew or should have known that the pipe was in an ancient, weak, decaying and corroded condition. Trial testimony showed that the pipe had been laid down approximately forty years before and never had been subsequently inspected.

At trial, experts testified that the pipe failed because of graphitic corrosion. Graphitic corrosion occurs when iron in pipe is leached out and replaced by graphite. The leaching of the iron from the pipe and its replacement by graphite does not change the pipe shape or contour. The only effect upon the pipe is that it loses strength; then, under pressure, the pipe gives way in a corroded spot. Graphitic corrosion is accelerated when cast iron pipe is laid in highly corrosive soil.

Grace contended that the City knew or should have known that the pipe was located in highly corrosive soil and that the City was negligent in failing to make any kind of inspection of it over the course of forty years. There was evidence of other incidents of

graphitic corrosion in water pipes in the Los Angeles harbor region. The City argued that there was no way adequately to inspect this or any pipe for evidence of graphitic corrosion except to excavate the pipe line in its entirety, including removing the earth under the pipe so that its bottom could be inspected as well as its top, which would put a strain on the pipe and might cause damage more extensive than the corrosion itself.

The City acknowledged that its policy with respect to water mains was to put the pipe in the ground and then to make neither inspections nor repairs until leaks occurred. When leaks develop they are repaired. When they become too numerous, the pipes are replaced. The City's evidence at trial suggested that this was the policy of all municipalities in California, insofar as they had any policies at all. Grace's experts responded that this does not describe a "policy" at all but is just an excuse for inaction.

Grace introduced water meter readings to show that for some months prior to the flood there had been a flow of water into the system averaging 140 cubic feet of water per day. Because the line was a "dead end" pipe, supplying water for firefighting purposes only, Grace argued, the City should have made a thorough investigation to determine the cause of the flow or loss of water.

The City's experts responded that the meter readings did not indicate that any water was escaping from the pipe at the point where it burst. On the contrary, they said, if there were a failure by reason of graphitic corrosion there would have been a flood of water, such as occurred, rather than a gradual leak.

Furthermore, in the absence of water coming to the surface the source of any leak could not be found without digging up the pipe.

The case was tried to a judge sitting without a jury. No special rule of governmental tort liability applies. Should the judge find the City of Los Angeles negligent, or not? Explain why or why not.

END OF EXAMINATION