TORTS
Mr. Martin
March 9, 2012

Examination ID 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 ten sub-questions which are to be answered on this white examination paper. Questions Two and Three are to be answered in blue books.

Please write legibly, begin each question on a new page, and leave a margin on the left-hand side of the page in your blue book or blue books.

Use only your examination identification number to identify this examination paper and your blue book or blue books. Your examination identification number is the last six digits of your social security number followed by the numerals “59.” Thus, if your social security number is 123-45-6789, your examination identification number is 456789-59.

If you use more than one blue book, please be sure that your exam identification number is on each one and number the blue books (“No. 1 of 2,” “No. 2 of 2,” etc.).

This white examination paper and 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.”
QUESTION ONE

Part A
Five multiple choice questions

Answer the following five questions by circling “A,” “B,” “C,” or “D.”

Questions 1-2 are based on the following fact situation:

Si was in the act of siphoning gasoline from Neighbor’s car in Neighbor’s garage and without his consent when the gasoline exploded and a fire followed. Rescuer, seeing the fire, grabbed a fire extinguisher from his car and put out the fire, saving Si’s life and Neighbor’s car and garage. In doing so, Rescuer was badly burned.

1. If Rescuer asserts a claim against Si for personal injuries, Rescuer will:

   [A] prevail, because he saved Si’s life.
   [B] prevail, because Si was engaged in converting Neighbor’s gasoline.
   [C] not prevail, because Rescuer knowingly assumed the risk.
   [D] not prevail, because Rescuer’s action was not a foreseeable consequence of Si’s conduct.

2. If Rescuer asserts a claim against Neighbor for personal injuries, Rescuer will:

   [A] prevail, because he saved Neighbor’s property.
   [B] prevail, because he acted reasonably in an emergency.
   [C] not prevail, because Neighbor was not at fault.
   [D] not prevail, because Rescuer knowingly assumed the risk.
Questions 3-5 are based on the following fact pattern:

Husband and Wife, walking on a country road, were frightened by a bull running loose on the road. They climbed over a fence to get onto the adjacent property, owned by Grower. After climbing over the fence, Husband and Wife damaged some of Grower’s rare plantings which were near the fence. The fence was posted with a large sign which stated, “No Trespassing.”

Grower saw Husband and Wife and came toward them with a large watchdog on a leash. The dog rushed at Wife. Grower had intended only to frighten Husband and Wife but the leash broke and, before Grower could restrain the dog, the dog bit Wife.

3. If Wife asserts a claim based on battery against Grower, will Wife prevail?

[A] Yes, because Grower intended that the dog frighten Wife.

[B] Yes, because the breaking of the leash establishes liability under *res ipsa loquitur*.

[C] No, because Wife made an unauthorized entry on Grower’s land.

[D] No, because Grower did not intend to cause any harmful contact upon Wife.

4. If Husband asserts a claim based on assault against Grower, will Husband prevail?

[A] Yes, because the landowner did not have a privilege to use excessive force.

[B] Yes, if Husband reasonably believed that the dog might bite him.

[C] No, if the dog did not come in contact with him.

[D] No, if Grower was trying to protect his property.
5. If Grower asserts a claim against Wife and Husband for damages to his plantings, will Grower prevail?

[A] Yes, because Wife and Husband entered on his land without permission.

[B] Yes, because Owner had posted a "No Trespassing" sign.

[C] No, because Husband and Wife were confronted by an emergency situation.

[D] No, because Grower used excessive force toward Wife and Husband.

Part B
Five short-answer questions

Answer the following questions by writing your answer in the space provided on this paper.

6. A passenger departed on an ocean voyage knowing that it would be a rough trip because of predicted storms. The ship was not equipped with the type of lifeboats required by an applicable statute. The passenger was swept overboard and he drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.

In an action for wrongful death against the ship's owner brought by the passenger's representative, what element of the claim is missing?
7. A customer fell and injured himself when he slipped on a banana peel while shopping at a grocer's store. The banana peel was fresh and clean except for a mark made by the heel of the customer's shoe. In an action brought by the customer against the grocer these are the only facts in evidence. The element of the customer's claim that is missing, or in doubt, is:

8. A smoker and a nonsmoker were enjoying their lunches at adjoining tables in a public park. Smoking is not forbidden in the park. When the smoker lit a cigar, the nonsmoker politely requesting that he not smoke, explaining that she had a severe allergy to tobacco smoke. The smoker took a deep drag and blew smoke directly into the nonsmoker's face.

The nonsmoker brought a battery action against the smoker. The element of the nonsmoker's battery action that is missing, or in doubt, is:

9. Walter, a young man, dressed in a tuxedo for his wedding day. Vera, his jealous ex-girlfriend, forced Walter at gunpoint into a tool shed behind her home. She locked Walter in the tool shed. The back of the shed had a window. Walter could have climbed out of the window but, if he did so, he would have gotten his tuxedo covered with mud. Rather than doing that, he banged on the tool shed door, begging Vera to let him out. Three hours later, after the time for the start of Walter's wedding, Vera let him out.

If Walter sues Vera for false imprisonment, what will be Vera's best defense?

10. There is another tort claim that Walter could assert against Vera. It is:
QUESTION TWO

Podsnap bought a new red Toyota Prius from a dealership in Lawrence, Massachusetts. He financed the car with a loan from the Friendly Finance Co. ("Friendly"). The loan agreement provided that, if Podsnap became delinquent in any monthly payment for more than fifteen days, Friendly might repossess the car without notice.

Podsnap was a lawyer who had trouble collecting bills from his clients. So it came about that Podsnap missed first one, then two, then three payments on the Prius. Friendly put the matter into the hands of two of its employees who specialized in repossession, Calhoun and Monsoon.

One morning Calhoun and Monsoon waited for Podsnap outside his office on Essex Street in Lawrence. Calhoun flagged Podsnap down. Hoping Calhoun to be a new client, Podsnap stopped. Monsoon joined Calhoun at the side of Podsnap’s car, reached in the window, and turned off the ignition. Monsoon instructed Podsnap to remove himself and his personal property from the car so that it could be repossessed. Podsnap refused to leave the car. Monsoon pulled back his jacket to show the butt of his (properly licensed) .38 special revolver said to Podsnap, “Out of the car or you’re dead meat.” Podsnap did not move. Calhoun called on his cell phone for a towtruck.

The towtruck arrived and backed up towards the Prius. Podsnap attempted to start his car, but Monsoon climbed into the passenger seat and forced the keys from Podsnap’s hand. The towtruck hooked up and raised the front wheels of the Prius.
On Calhoun’s orders, the towtruck started away with Podsnap and Monsoon inside the Prius. Podsnap sought to eject Monsoon with a series of well-aimed blows but his attempts to dislodge the repossessor were unavailing. Podsnap then pulled on the parking brake and put the transmission into reverse. The Prius’s tires screamed. The towtruck stalled and came to a stop in front of the Lawrence District Court.

The passing public, including several lawyers of Podsnap’s acquaintance, gathered around to watch the show. A police cruiser finally arrived. Police Officer Dogberry asked to see Podsnap’s driver’s license. Unfortunately for Podsnap, it had expired. Dogberry arrested Podsnap and put him in the back seat of the cruiser. With this assistance from the law, Calhoun and Monsoon completed their work to the entire satisfaction of the Friendly Finance Co. The towtruck drove away with the Prius.

What torts? What tort defenses?

QUESTION THREE

In 1891 a mysterious stranger, later determined to be a man named Norcross, visited the New York office of the financier and philanthropist Russell Sage. The stranger was carrying a carpet bag and said that he wanted to see Mr. Sage about some railroad bonds. He claimed to have a letter of introduction from John D. Rockefeller.

When Sage invited the stranger into his office, Norcross handed him the letter. It was typewritten and not the work of John D. Rockefeller. It said: “The bag I hold in my hand contains ten pounds of dynamite. If I drop this bag on the floor the dynamite will explode and destroy this building in ruins and kill every human being in the building. I demand $1,200,000, or I will drop the bag. Will you give it to me? Yes or no?”

7
Sage read the letter twice, folded it, handed it back to Norcross, and then started to talk, telling Norcross that he had an engagement with two gentlemen, that he was short of time and, if it was going to take much time, he wanted Norcross to come back later in the day. At the same time Sage was slowly moving towards a clerk in his office named Laidlaw who did not know what was happening. Sage approached Laidlaw on the latter’s left side, placed his (Sage’s) right hand on Laidlaw’s shoulder, took Laidlaw’s left hand in his own left hand, and gently moved Laidlaw to his left about eighteen inches until Laidlaw was positioned directly between Sage and Norcross.

At about this time Norcross realized that he was not going to get the money and pulled the fuse on the carpet bag. There was a tremendous explosion which wrecked the whole building. Norcross was blown to bits. Laidlaw was injured. Russell Sage, however, was completely unharmed.

Laidlaw sued Sage. What result? Why?

[Note No. 1. This is a Torts question. Ignore any worker’s compensation law which might, today, affect the result].

[Note No. 2. This is a true story].

* * *

REMEMBER, THIS WHITE EXAMINATION PAPER AND ALL BLUE BOOKS MUST BE TURNED IN AT THE CLOSE OF THE EXAMINATION. THIS INCLUDES BLUE BOOKS THAT ARE ENTIRELY BLANK, AND ALSO BLUE BOOKS THAT HAVE BEEN USED AS SCRAP PAPER. LABEL ANY SCRAP BLUE BOOK WITH THE WORD, “SCRAP.”
MIDTERM EXAMINATION
COMPLETE ANSWERS

QUESTION ONE

Part A.

1. B
2. C
3. A
4. B
5. A.

Part B.

6. Causation.
7. Breach (credit given for “constructive notice”).
8. Contact.
10. Assault OR intentional infliction of emotional distress.

QUESTION TWO

When Monsoon ordered Podsnap out of the car and flashed his handgun, Monsoon assaulted Podsnap if the later apprehended that a harmful or offensive contact might imminently follow.
When Monsoon reached into the car and turned off the ignition, it could be argued that Monsoon trespassed on Podsnap’s chattel. Alternatively, it could be argued that this was a battery upon Podsnap, a harmful or offensive contact with an object closely associated with Podsnap’s person.

When Monsoon forced the keys from Podsnap’s hand, this was another battery.

When Monsoon took the keys away from Podsnap, Monsoon effectively seized the car. If there were any doubt that seizing the keys equals seizing the car, Monsoon and Calhoun physically seized the car by means of the towtruck. This was conversion. Monsoon and Calhoun were not in “fresh pursuit” of goods wrongfully taken because Podsnap, even if delinquent on his payments, was in rightful possession of the car. Friendly’s right to recover the car does not include the right to recover by means of a breach of the peace. [Casebook p. 116, notes 5, 6 and 7; UCC s. 9-503]. It is true that Podsnap consented to repossess of the car in the loan agreement, but Podsnap did not consent to repossession by means of force and violence upon his person.

When the towtruck drove away with Podsnap inside, this was false imprisonment unless Podsnap had a reasonable means of escape. Possibly Podsnap could have exited the car whenever the towtruck stopped at a red light.

If Podsnap’s “well aimed blows” found their target, this was a battery upon Monsoon. Podsnap could claim (with doubtful likelihood of success) a privilege of self-defense and a privilege to defend property.

Because Calhoun and Monsoon intended to cause, and actually did cause, Podsnap to be publicly humiliated in front of his peers at the courthouse, Podsnap could claim the tort of intentional infliction of emotional distress.

If driving with an expired license is not an arrestable offense in Massachusetts, then officer Dogberry falsely arrested Podsnap.
QUESTION THREE

There would be a question of battery by Sage. His actual hands-on touching of Laidlaw was intentional but probably not perceived as harmful or offensive. If, however, Sage were “substantially certain” that the dynamite would explode, it could be argued that the explosion itself supplies the element of harmful or offensive contact.

More likely Laidlaw would sue on a negligence theory. Negligence requires consideration of five elements.

1. **Duty.** Ordinarily in the common law there is no duty to initiate action to rescue another. Sage had no duty towards Laidlaw just because Sage and Laidlaw were confronted by the threat of Norcross’s bomb. However, Sage did something, not nothing. Under those circumstances, it could be argued that Sage had a duty not to make the situation worse. A duty on Sage’s part towards Laidlaw could also be found (as some cases hold) in the employer-employee relationship.

2. **Breach.** If Sage owed Laidlaw a duty, breach of duty could be found because Sage failed to take reasonable steps to minimize harm to Laidlaw. [Query: Should he have jumped in front of Laidlaw? What would you have done?] Sage could defend that his action was impulsive and taken in an emergency. Or he could cite “self-preservation, the highest law of nature,” in his defense.

3. **Causation in fact.** This is the weakest link in the chain. The explosion was in fact caused by Norcross. There is little doubt that, “but for” Sage’s shielding himself behind Laidlaw’s body, Sage would have been injured or killed alongside Laidlaw. It’s not the same to assert, however, that “but for” Sage’s actions Laidlaw would not have been injured. There is no evidence to warrant an inference that Laidlaw would not have been equally injured had he been standing eighteen inches to his right, in the place from which Sage removed him.

4. **Proximate cause.** Ordinarily the criminal act of a third party (Norcross) is an intervening cause which cuts off the liability of others for negligence.

5. **Damages.** If Laidlaw succeeds in proving negligence against Sage, Sage will be deemed a concurrent tortfeasor along with Norcross. Since Laidlaw’s injuries are indivisible, Sage will be liable for the full amount of Laidlaw’s damages.

[The question was derived from Laidlaw v. Sage, 158 N.Y. 73, 52 N.E. 679 (1899)].
TORTS
Mr. Martin
March 11, 2011
Exam ID No.

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QUESTION ONE

IN EACH OF THE FOLLOWING QUESTIONS, FILL IN THE BLANKS:

Question 1. The elements of the tort claim called “battery” are:

1. .............................................................................................., and

2. ..............................................................................................

Question 2. The elements of the tort claim called “assault” are:

1. ..............................................................................................

2. .............................................................................................., and

3. ..............................................................................................

Question 3. The elements of the tort claim called “conversion” are:

1. ..............................................................................................

2. ..............................................................................................

3. .............................................................................................., and

4. ..............................................................................................
Question 4. The elements of the tort claim called “negligence” are

1. 

2. 

3. ____________________________________________________________________________, and

4. 

Question 5. When Denton heard that his neighbor, Prout, intended to sell his home to a minority purchaser, Denton told Prout that Prout and his wife and children would meet with “accidents” if he did so. Prout then called the prospective purchaser and told him that he was taking the house off the market.

Prout asserts a claim against Denton for assault. The element of Prout’s assault claim that is missing from the above fact pattern, or in doubt, is:

Question 6. Plummer, a well-known politician, was scheduled to address a large crowd at a political dinner. Just as he was about to sit down at the head table, Devon pushed Plummer’s chair to one side. As a result, Plummer fell to the floor. Plummer was embarrassed at being made to look foolish before a large audience but suffered no physical harm.

Plummer asserts a claim against Devon for battery, seeking damages on account of embarrassment. The element of Plummer’s claim of battery that is missing from the above fact pattern, or in doubt, is:
Question 7. Passer was driving his pickup truck along a lonely road on a very cold night. Passer saw Tom, who was a stranger, lying in a field by the side of the road and apparently injured. Passer stopped his truck, alighted, and, upon examining Tom, discovered that Tom was intoxicated and in danger of suffering from exposure to the cold. However, Passer returned to his truck and drove away without making any effort to help Tom. Tom remained lying at the same place and was later injured when struck by a car driven by Traveler who, drowsy and inattentive, had veered off the road into the field and hit Tom. Traveler did not see Tom prior to hitting him.

Tom asserts a negligence claim against Passer for damages for his injuries. The element of Tom’s negligence claim that is missing from the above fact pattern, or in doubt, is:

IN EACH OF THE FOLLOWING QUESTIONS, CHOOSE THE BEST ANSWER

Question 8. Owner brought his television set to Repairer for repair. Repairer repaired, but did not deal in, television sets. Repairer sold the set to Buyer. Buyer believed that Repairer owned the set.

If Owner asserts a conversion claim against Repairer and Buyer, Owner will prevail against

(A) Repairer but not Buyer, because Buyer was a good faith purchaser.
(B) Both Repairer and Buyer, because each exercised dominion over the television set.

(C) Buyer but not Repairer, because Repairer no longer has possession of the television set.

(D) Buyer but not Repairer, because Repairer had lawful possession of the television set.

**Question 9.** Craig brought a medical malpractice suit against Howard, a board-certified physician. At trial, Craig’s entire evidence consisted of the following: (1) Craig first went to Howard because of severe abdominal pains and bloody diarrhea; (2) After several examinations, Howard recommended corrective surgery on Craig’s large intestine; (3) After adequate advice from Howard, Craig gave informed consent to the surgery which Howard had recommended, and the surgery was performed; (4) Starting almost immediately after the surgery, and to the present day, Craig continues to have severe abdominal pains and bloody diarrhea.

After establishing these facts, Craig rested. Howard moved for a directed verdict. Which of the following statements is most correct?

(A) Howard’s motion should be denied because whether Howard failed to exercise the standard of care of a practitioner in his specialty is a jury question.

(B) Howard’s motion should be denied because the facts present a case of *res ipsa loquitur*.

(C) Howard’s motion should be granted if the judge determines that Howard will most likely prevail at trial.

(D) Howard’s motion should be granted because Craig introduced insufficient evidence to support a claim of medical malpractice.
Question 10. Chuck obtained a permit to cut firewood in the national forest. He drove his pickup to the designated area and began to cut down a marked tree with his new axe. Chloe, a member of the Green Militant movement, approached Chuck and berated him for cutting the tree. (Green Militants advocate a total ban on the killing of plants). Chuck told her that he had a permit to cut, and to leave him alone. Chloe persisted, however, shouting "Plantkiller!" Intending to frighten Chloe, Chuck swung his axe as if to strike her. The manufacturer of the axe had neglected to insert the metal wedge that secures the handle to the blade, and Chuck’s earlier chopping had loosened the head. The axe head flew off the handle, striking Chloe and breaking her clavicle.

If Chloe brings an action for battery against Chuck, will she recover?

(A) No, if a reasonable person would have been angered by Chloe’s statements.

(B) No, because the defective axe was the cause in fact of Chloe’s injury.

(C) Yes, because Chuck intended to frighten Chloe.

(D) Yes, unless she intended to provoke Chuck.

QUESTION TWO

The United States Coast Guard removes obstructions from the navigable waters of the United States. Pursuant to a federal law known as the Wreck Act (33 U.S.C. s. 409), the United States may collect from a shipowner the cost of raising and removing a wrecked vessel which obstructs navigation, where the vessel sank as a result of the shipowner’s negligence.
The bulk carrier M/V [Motor Vessel] Maritime Nexus left Pensacola, Florida, for New Orleans loaded with 10,000 tons of scrap iron. At nine o'clock on a clear morning, about halfway across Mobile Bay when the ship was in a marked channel with ample water under the keel, it suddenly buckled amidships and broke apart. It sank in the channel with its buckled midsection resting on the bottom and its bow and stern rising above the surface. In this posture it constituted a hazard to navigation and the Coast Guard removed it at a cost of $2,000,000.

The Coast Guard investigated the sinking. The investigators, who included expert naval architects and engineers retained for the purpose, determined that no collision with another vessel had occurred and that the ship had not grounded on the bottom of the channel. They found that the Maritime Nexus had departed Pensacola with its radar inoperative at distances greater than one mile and its tachometer not functioning, both of these conditions violating Coast Guard regulations. The investigators were not, however, able to come to a conclusion as to the cause of the sinking.

The United States sued the Maritime Nexus's owners to recover $2,000,000, the cost of raising and removing the ship. On these facts, what result? Why?

[Note: This is a Torts question. No knowledge of maritime law is assumed or required on your part.]

QUESTION THREE

Thinwhistle bought a small uninhabited island in Sandy Bottom Lake in Maine with the idea of building a vacation cottage. All he was able to afford, however, was an outhouse and a tent site. Thinwhistle rowed his
boat to the island one day for the purpose of setting up his tent and spending the night.

For many years property owners from the lakeshore, and others, had visited the island to picnic, pick blueberries, and fish. So it happened that, as Thinwhistle was approaching the island, he saw another rowboat beached on the shore. The boat had bought Hope and Dope, a young couple, to the island to picnic and who knows what else. Thinwhistle was annoyed to find somebody else's boat on his island. He set the boat adrift.

Hope and Dope appeared on the shore a moment later. They shouted some most unpleasant expletives at Thinwhistle, who backed his boat into the lake. Dope threw a rock, trying to hit Thinwhistle's boat, but missed and his Thinwhistle. Realizing that they were marooned, Hope and Dope swam to Thinwhistle's boat and tried to climb in. They grabbed onto the gunwales of the boat and, in their efforts to get in, succeeded in overturning it. Hope and Dope were strong swimmers who swam the half mile to safety on the shore of Sandy Bottom Lake. Thinwhistle, however, drowned.

What tort claims? What defenses?

END OF EXAMINATION

REMEMBER TO TURN IN ALL BLUE BOOKS. THIS INCLUDES BLANK BLUE BOOKS AND SCRAP BLUE BOOKS. LABEL ANY SCRAP BLUE BOOK WITH THE WORD "SCRAP."
TORTS
Mr. Martin
March 28, 2011

MIDTERM EXAMINATION
COMPLETE ANSWERS

QUESTION ONE

Question 1. The elements of the tort claim called "battery" are:

1. Intent.
2. Harmful or offensive touching.

Question 2. The elements of the tort claim called "assault" are:

1. Intent.
2. Plaintiff's apprehension.
3. Of an imminent harmful or offensive touching.

Question 3. The elements of the tort claim called "conversion" are:

1. Volitional and wrongful.
2. Exercise of dominion and control.
3. Over chattel property as to which plaintiff has the right of possession or ownership.
4. So substantial that defendant should be required to pay plaintiff the full value of the property.

Question 4. The elements of the tort claim called "negligence" are:

1. Duty.
2. Breach.
3. Causation:
   a. cause in fact;
   b. "proximate" or "legal" cause.
4. Damages.

Question 5. When Denton heard that his neighbor, Prout, intended to sell his home to a minority purchaser, Denton told Prout that Prout and his wife and children would meet with "accidents" if he did so. Prout then called
the prospective purchaser and told him that he was taking the house off the market.

Prout asserts a claim against Denton for assault. The element of Prout’s assault claim that is missing from the above fact pattern, or in doubt, is:

“imminent” harmful or offensive touching

Question 6. Plummer, a well-known politician, was scheduled to address a large crowd at a political dinner. Just as he was about to sit down at the head table, Devon pushed Plummer’s chair to one side. As a result, Plummer fell to the floor. Plummer was embarrassed at being made to look foolish before a large audience but suffered no physical harm.

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Intent

Question 7. Passer was driving his pickup truck along a lonely road on a very cold night. Passer saw Tom, who was a stranger, lying in a field by the side of the road and apparently injured. Passer stopped his truck, alighted, and, upon examining Tom, discovered that Tom was intoxicated and in danger of suffering from exposure to the cold. However, Passer returned to his truck and drove away without making any effort to help Tom. Tom remained lying at the same place and was later injured when struck by a car driven by Traveler who, drowsy and inattentive, had veered off the road into the field and hit Tom. Traveler did not see Tom prior to hitting him.

Tom asserts a negligence claim against Passer for damages for his injuries. The element of Tom’s negligence claim that is missing from the above fact pattern, or in doubt, is:

duty or causation
IN EACH OF THE FOLLOWING QUESTIONS, CHOOSE THE BEST ANSWER

**Question 8.** Owner brought his television set to Repairer for repair. Repairer repaired, but did not deal in, television sets. Repairer sold the set to Buyer. Buyer believed that Repairer owned the set.

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(B) Howard’s motion should be denied because the facts present a case of *res ipsa loquitur.*
(C) Howard’s motion should be granted if the judge determines that Howard will most likely prevail at trial.
(D) **Howard’s motion should be granted because Craig introduced insufficient evidence to support a claim of medical malpractice.**

**Question 10.** Chuck obtained a permit to cut firewood in the national forest. He drove his pickup to the designated area and began to cut down a marked tree with his new axe. Chloe, a member of the Green Militant movement, approached Chuck and berated him for cutting the tree. (Green Militants advocate a total ban on the killing of plants). Chuck told her that he had a permit to cut, and to leave him alone. Chloe persisted, however, shouting “Plantkiller!” Intending to frighten Chloe, Chuck swung his axe as if to strike her. The manufacturer of the axe had neglected to insert the metal wedge that secures the handle to the blade, and Chuck’s earlier chopping had loosened the head. The axe head flew off the handle, striking Chloe and breaking her clavicle.

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(B) No, because the defective axe was the cause in fact of Chloe’s injury.
(C) **Yes, because Chuck intended to frighten Chloe.**
(D) Yes, unless she intended to provoke Chuck.
QUESTION TWO

To construct a prima facie case of negligence on the part of the shipowner, the United States must produce some evidence on each element of a negligence case: duty, breach, causation and damages. The big problem for the United States is that it has no evidence of causation, because the experts retained by the Coast Guard could not conclude that the breakup of Maritime Nexus was caused by breach of duty on the part of the shipowner or anybody else.

It is true that Maritime Nexus was in violation of Coast Guard regulations with respect to its radar and its tachometer. This would be negligence per se if (1) the harm that occurred (a maritime casualty) was of the kind that the regulations were intended to prevent (which it was) and (2) if the plaintiff United States is of the class that the regulation was intended to protect (which is more doubtful). However, negligence per se, while it proves duty and breach, does not dispense with the need for evidence of causation which, once again, the United States lacks.

On the other hand the principle of proof called res ipsa loquitur does enable the United States to avoid the requirement for prima facie evidence of causation. To invoke res ipsa loquitur the United States must show: (1) The accident does not ordinarily happen in the absence of somebody’s negligence. Ships do not ordinarily break apart in calm water unless there has been negligence in design, inspection, maintenance, overloading or load maldistribution. The United States must also show: (2) The defendant was in sole control of the instrumentality causing harm. Here, the shipowner, through its captain and crew, was in sole control of Maritime Nexus. Finally, the United States must show: (3) That it (the United States) had nothing to do with the happening of the accident, which is self-evident.

QUESTION THREE

1. Hope and Dope v. Thinwhistle’s estate. When Thinwhistle set the boat adrift, he trespassed on their chattel because he dispossessed them of it. If the boat is never recovered, the tort is conversion. By setting the boat adrift Thinwhistle confined Hope and Dope to the island without a reasonable means of escape. This is false imprisonment. Thinwhistle’s conduct was extreme and outrageous, incomprehensible except as intended to bully Hope and Dope by putting them in his power, and an intentional infliction of emotional distress.
2. Thinwhistle's defense. Thinwhistle's estate would respond that he was defending his property against trespassers. The force he used, however, was unreasonable because it was not directed to the ejection of the trespassers. (In fact, it was the reverse because it made Hope and Dope unable to cease their trespass).

3. Thinwhistle's estate v. Hope and Dope. Hope and Dope entered Thinwhistle's island. This was trespass to land, unless the land is open to the public by reason of an easement by prescription, or unless Maine law requires posting the land "No Trespassing." Words alone are not an assault, but when Dope threw the rock at Thinwhistle's boat, he assaulted Thinwhistle if the latter saw Dope throw the rock. When the rock hit Thinwhistle it was a battery by transferred intent. When Hope and Dope swam towards Thinwhistle's boat, Thinwhistle had reason to fear a harmful or offensive touching of his person. This was assault. When Hope and Dope displaced Thinwhistle from his boat it was [negligence] [battery] [conversion] [trespass to chattel] [credit given for any].

4. Hope's and Dope's defenses v. Thinwhistle's estate. Hope and Dope could claim to have acted in self defense or necessity because Thinwhistle's boat was their only means of escape from the island. If the claim is negligence, Hope and Dope could defend that they were acting in an emergency without time to plan a safer course of action. Finally, Hope and Dope could defend that Thinwhistle was contributorily or comparatively negligent because he set in motion the entire sequence of events by setting Hope's and Dope's boat adrift.
TORTS
Mr. Martin
March 12, 2010

Examination ID 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 ten 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 in your blue book or blue books.

Use only your examination identification number to identify this examination paper and your blue book or blue books. Your examination identification number is the last six digits of your social security number followed by the numerals “59.” Thus, if your social security number is 123-45-6789, your examination identification number is 456789-59.

If you use more than one blue book, please be sure that your exam identification number is on each one 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.”
QUESTION ONE

In questions 1 through 10 below, fill in the blanks in accordance with the instructions given you in each question.

SHORT ANSWER QUESTION 1. The elements of the tort claim called "battery" are:

1. ____________________________________________, and

2. ____________________________________________.

SHORT ANSWER QUESTION 2. The elements of the tort claim called "false imprisonment are:

1. ____________________________________________

2. ____________________________________________

3. ____________________________________________, and

4. ____________________________________________.
SHORT ANSWER QUESTION 3. The elements of the tort claim called "conversion" are:

1. ________________________________,

2. ________________________________

3. ________________________________, and

4. ________________________________

SHORT ANSWER QUESTION 4. The elements of the tort claim called "trespass to land" are:

1. ________________________________, and

2. ________________________________

SHORT ANSWER QUESTION 5. The elements of the tort claim called "intentional infliction of emotional distress" are:

1. ________________________________,

2. ________________________________

3. ________________________________, and

4. ________________________________
SHORT ANSWER QUESTION 6. Sound engineer and computer programmer Klutzmonkey experiments with digital recordings of loud and harsh-sounding musical instruments, trying to produce programming code that captures the range of noises that these bizarre instruments make. In these experiments, Klutzmonkey emits loud unpleasant sounds that disturb his neighbors.

The neighbors sue Klutzmonkey for trespass. The element of the neighbors' trespass case against Klutzmonkey that is missing is:

SHORT ANSWER QUESTION 7. Parker and Dawn, both seventh graders, liked to kid around with each other. One day in the lunchroom, as Parker was placing her lunch tray on the table and starting to sit down, Dawn pulled the chair out from under her. Parker noticed this too late, lost her balance trying to avoid a fall, and spilled the entire tray of food onto her clothes. Dawn and the others at the table began to laugh loudly. Soon the entire lunchroom was looking at Parker and laughing. Parker began to cry. She ran from the lunchroom to the school nurse, who called her parents to pick her up. For several weeks Parker felt so humiliated that she refused to return to school. In addition she became physically ill, stopped eating, and had to be placed on medication to improve her appetite.

The element of Parker's claim for intentional infliction of emotional distress that is missing or in doubt is:

SHORT ANSWER QUESTION 8. 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 9. 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 10. 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 found out that he had been locked in his room, he sued the Notell Hotel for false imprisonment.

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

____________________________________________________________________________

QUESTION TWO

At 10:00 P.M. on a winter night Mildred Riley was driving on a country road, Route 83, in the state of Catatonia, when she witnessed an automobile accident. She stopped immediately and saw that the occupants of both of the cars involved were seriously injured. Not being a trained first responder, she decided that she could best help by calling 911. With a shock, she realized that she had left her cell phone on the kitchen table. However, she knew that there was a shopping mall about two miles ahead on Route 83 where there was a CVS store that would be open until midnight.
She drove to the mall. Because there was a multiplex cinema in the mall, the parking lot was full. The only parking space that she could see was in front of the CVS. It was marked as reserved for handicapped persons. She quickly looked around and saw no other open space, so she decided to park in the handicapped space in order to make the call. She went in to the store and asked the cashier if she could use the telephone to report an emergency. The cashier directed her to the pharmacy at the rear of the store where the telephone was located. Reluctantly, the pharmacist on duty allowed Mildred to call 911.

At the time when Mildred arrived at the mall another customer, Amanda Salazar, also arrived. Amanda had come to pick up a prescription at the CVS pharmacy. Amanda suffered from severe arthritis in both knees. She had a handicapped parking permit on her automobile and was expecting to park in the handicapped space. She wrote down Mildred’s license number, intending to report the violation to the police. When a parking space about one hundred yards away opened up, she decided to park there. She knew that she could walk that distance, although with difficulty and pain. The lighting was not good where she parked and, as she was slowly getting out of her car, she was attacked and robbed by a purse snatcher. The purse snatcher knocked her to the ground, causing serious injuries for which she has brought suit against Mildred.

The traffic control law of Catatonia contains the following provision:

(1) Any owner or operator of commercial real estate who offers parking for the general public shall provide specially designed and marked parking spaces for the exclusive use of physically disabled persons who have been issued parking permits pursuant to subsection (5) of this statute.

(2) Any person who parks a vehicle in any parking space designated with the international symbol of accessibility or the caption “PARKING BY DISABLED PERMIT ONLY,” or with both such symbol and caption, is guilty of a Class C traffic infraction unless such vehicle displays a parking permit issued pursuant to subsection (5) of this statute, and such vehicle is occupied by a person eligible for such permit.

The parking space occupied by Mildred had the sign required by the statute. A class C traffic infraction is punishable by a civil penalty in the amount of $100.00.

Mildred’s motor vehicle liability insurer has asked you to represent Mildred in the suit brought by Amanda. Evaluate Amanda’s claim.
QUESTION THREE

According to a recent story in the *Wall Street Journal*, firearms advocates in several American states are agitating for legislation that will permit anyone openly to carry a handgun on his or her person, even in establishments where alcohol is served.

Alphonse and Dexter were drinking in a bar in Boston last summer. Both were wearing ballcaps and warmup jackets which proclaimed their allegiance to the New York Yankees. Two brothers, Bob and Charles, were drinking at a nearby table. “Yankees suck,” called out Bob in a loud voice.


Alphonse stood up. Bob and Alphonse squared off and began a combination fistfight and wrestling match. When Alphonse appeared to be winning, Charles pulled out his SOG special forces knife and thrust it, unsuccessfully, at Alphonse. Dexter saw Alphonse being attacked with a knife. Dexter pulled his handgun out and fired a shot at Charles. Dexter missed Charles, but the bullet struck and wounded Earl, a patron who was not involved in the fracas and was, in fact, a Cincinnati Reds fan. Dexter did not have a permit to carry the handgun. Bob and Charles fled the scene after Dexter’s shot.

Charles dropped his knife while fleeing. Dexter picked it up and took it home. It cost $250 at retail. When Charles later found out that Dexter had his knife, he walked up to Dexter’s door and knocked. Dexter answered the door and told Charles, “Get off my property.” When Charles refused, Dexter let loose his dog Homer. Homer chased Charles off Dexter’s property, but never bit Charles.

What torts?
What tort defenses?
TORTS
Mr. Martin
April 21, 2010

MIDTERM EXAMINATION
COMPLETE ANSWERS

QUESTION ONE

SHORT ANSWER QUESTION 1. The elements of the tort claim called “battery” are:

1. Intent.
2. Harmful or offensive touching of another

SHORT ANSWER QUESTION 2. The elements of the tort claim called “false imprisonment” are:

1. Intent.
2. Confinement of a person within a bounded area
3. by force or threat of force, and
4. plaintiff is conscious of confinement, or else suffers actual harm.

SHORT ANSWER QUESTION 3. The elements of the tort claim called “conversion” are:

1. Volitional and wrongful
2. exercise of dominion and control
3. over chattel property as to which plaintiff has the right of possession or ownership,
4. so serious that defendant should be required to pay plaintiff the full value of the property.
SHORT ANSWER QUESTION 4. The elements of the tort claim called “trespass to land” are:

1. Intent.
2. Entry on real estate in possession of another.

SHORT ANSWER QUESTION 5. The elements of the tort claim called “intentional infliction of emotional distress” are:

1. Intent.
2. Extreme and outrageous conduct.
3. Causation.
4. Plaintiff’s emotional distress is “severe.”

SHORT ANSWER QUESTION 6. Sound engineer and computer programmer Klutzmonkey experiments with digital recordings of loud and harsh-sounding musical instruments, trying to produce programming code that captures the range of noises that these bizarre instruments make. In these experiments, Klutzmonkey emits loud unpleasant sounds that disturb his neighbors.

The neighbors sue Klutzmonkey for trespass. The element of the neighbors’ trespass case against Klutzmonkey that is missing is:

entry on real estate in possession of another.

SHORT ANSWER QUESTION 7. Parker and Dawn, both seventh graders, liked to kid around with each other. One day in the lunchroom, as Parker was placing her lunch tray on the table and starting to sit down, Dawn pulled the chair out from under her. Parker noticed this too late, lost her balance trying to avoid a fall, and spilled the entire tray of food onto her clothes. Dawn and the others at the table began to laugh loudly. Soon the entire lunchroom was looking at Parker and laughing. Parker began to cry. She ran from the lunchroom to the school nurse, who called her parents to pick her up. For several weeks Parker felt so humiliated that she refused to return to school. In addition she became physically ill, stopped eating, and had to be placed on medication to improve her appetite.
The element of Parker's claim for intentional infliction of emotional distress that is missing or in doubt is:

extreme and outrageous conduct.

SHORT ANSWER QUESTION 8. 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:

intent.

SHORT ANSWER QUESTION 9. 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:

plaintiff had no current right to possession of the coat.

SHORT ANSWER QUESTION 10. 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 found out that he had been locked in his room, he sued the Notell Hotel for false imprisonment.

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

consciousness of confinement or actual harm.
QUESTION TWO

"No good deed goes unpunished."

There is a statute that applies to the facts of this case. The statute is intended for the protection of the public and imposes a specific duty on Mildred. Mildred violated the statute.

Violation of such a statute, in most American jurisdictions, is proof of duty and breach—often called "negligence per se"—where the plaintiff is of the class that the statute was intended to protect. Amanda, a disabled parking permit-holder, is of that class.

To rely on the negligence per se doctrine, plaintiff must also prove that the harm that she suffered is of the type that the legislature was trying to prevent. This is more doubtful.

The negligence per se doctrine also does not dispense with proof of causation, both cause in fact and proximate cause. "But for" Mildred's parking in the handicapped spot, would Amanda not have been mugged? Alternatively, was Mildred's parking in the handicapped spot a "substantial factor" in Amanda's injury because it enabled the mugger to act in the dark, away from the storefronts?

Usually, an intervening criminal act is considered a superseding cause that breaks the chain of causation and excuses anterior acts of negligence, the reasoning being that criminal activity on the part of others is unforeseeable. Robberies and like crimes in shopping center parking lots, unfortunately, have become sufficiently commonplace as to warrant some doubt about foreseeability.

Finally, a defendant can be excused by the trier of fact from liability based on negligence per se as shown in Zeni v. Anderson, CB p. 224. Mildred could plead that she was acting for the protection of the accident victims. (However, older cases take view that this defense should be available only in the case of a third person towards whom the defendant has a duty to rescue, for example a family member). Alternatively, Mildred could claim that she should be excused because she was acting in an emergency not of her own making, as illustrated in Cordas v. Peerless Transportation Co., CB p. 154.
QUESTION THREE

"Mere words" are not an assault but, when the trash talk turned into squaring off to fight, Alphonse and Bob each apprehended harmful or offensive contact on the part of the other.

The facts do not permit a conclusion as to who struck the first blow. Alphonse and Bob each battered the other. The party who struck the first blow, however would not be entitled to claim self-defense. Also, some jurisdictions would recognize a defense of mutual consent to the batteries.

When Charles sought to stab Alphonse, he escalated to the use of deadly force which would be outside the scope of his right to defend his brother. If Alphonse was aware of the attempt to stab him, Charles assaulted Alphonse.

Although Dexter’s gunshot missed Charles, Charles doubtless heard the gun go off and had good reason to apprehend a harmful or offensive contact to his person. Dexter therefore assaulted Charles. In response Dexter could claim that he was meeting deadly force with deadly force. However, his intent to assault is transferred to the battery that occurs when his gunshot hits Earl.

In addition to battery, Dexter is liable for negligence per se because he is armed without a permit to carry. Even in the absence of a statutory violation, Dexter would be liable to Earl for negligence for firing his weapon in a crowded bar.

Dexter converted Charles’s knife when he picked it up and took it home. As a defense, Dexter could say that Charles had abandoned the knife. However, when Dexter failed to return it to Charles there was conversion, if not before.

Charles trespassed on Dexter’s real estate, unless there is an implied license to the public to go upon Dexter’s front walk for the purpose of reaching the door. Charles could claim that he had a privilege to recapture his chattel, the knife, but would have difficulty showing that he was in “hot pursuit.”

Finally, Dexter assaulted Charles when he let the dog loose to chase Charles off the property. Dexter could claim the privilege of use of reasonable force to eject trespassers.
TORTS
Mr. Martin
March 18, 2008

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 ten 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 in your blue book or blue books.

Use only your social security number to identify this examination paper and your blue book or blue books. If you use more than one blue book, please be sure that your social security number is on each one 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.”
QUESTION ONE

This Question One consists of ten short-answer questions. Write your answers directly on this examination paper in the blanks provided.


The plaintiff went to the defendant hospital for surgery to correct a problem with her feet called “hammer toes.” The surgery was performed by a board-certified podiatrist, who was a defendant in the plaintiff’s subsequent lawsuit. The plaintiff was placed under general anaesthesia by the second defendant, a board-certified anaesthesiologist. Both of these defendants were employees of the defendant hospital.

When the plaintiff awakened in the recovery room, she discovered that her front teeth were missing. They were her natural teeth and were present when she went under the general anaesthesia. The plaintiff admits that she has no idea how she lost her teeth.

In order to oppose defendants’ motion for summary judgment, on what doctrine of tort law will plaintiff rely?

Question 2. In Nixon v. Mr. Property Management, 690 S.W. 2d 546 (Tex 1985), the plaintiff, Debbie, aged ten, resided at the Landmark Apartments. At about 7:00 P.M. on an August night a young man abducted her from a sidewalk outside the Landmark Apartments and dragged her to the Chalmette Apartments across the street where he raped her, put her in a closet, told her not to leave, and disappeared. There are no other known witnesses.

Debbie can introduce evidence of the dilapidated condition of the apartment unit where the rape took place. The glass was broken from the windows and the front door was off its hinges. The unit was empty, filthy, and full of debris.
Debbie can also introduce into evidence the State Building Code. The Building Code contains minimum standards for property owners, including the following:

**Property standards.** An owner shall: * * *

(6) keep the doors and windows of a vacant structure or vacant portion of a structure securely closed to prevent unauthorized entry.

Violation of the Building Code is punishable by a fine of $1000.

Debbie sued the owner of the Chalmette Apartments. In order to oppose defendant's motion for summary judgment, on what doctrine of tort law will Debbie rely?

Question 3. The elements of the tort claim called "conversion" are:

1. __________________________________________________________

2. __________________________________________________________

3. __________________________________________________________

4. __________________________________________________________
Questions 4-5. Desperate for money, Sylvia pawns her fur coat at Benny’s Pawnshop for a $500 loan. In which of the following cases could Sylvia recover against Benny for conversion of the coat? Answer “Yes” or “No.”

4. Before repaying the loan, Sylvia demanded return of her coat so that she could wear it to a party. Benny refused to give it back.

Answer: ________

5. A burglar broke into Benny’s Pawnshop and stole Sylvia’s coat.

Answer: ________

Question 6. In the famous case of United States v. Carroll Towing Co., casebook p. 141, Judge Learned Hand spoke of three variables: (1) “P,” the probability of a bad outcome occurring; (2) “L,” the severity of the outcome that would result; and “B,” “the burden of adequate precautions.” The negligence at issue was failure to have a barge attendant (“bargee”) on board. The events took place in New York harbor during World War II.

If these events had taken place instead in a quiet, idle harbor during peacetime, would P, L and B go up, or down?

Up: ________ Down: ________

Question 7. The elements of the tort claim called “battery” are:

1. ____________________________

2. ____________________________

Question 8. 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 claim is based on battery. The element of Plaintiff’s battery claim that is missing or in doubt is:

Question 9. The elements of the tort claim called “assault” are:

1. 

2. 

3. 

Question 10. 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 or in doubt is:

QUESTION TWO

Cecily Churchmouse, a widow, lived in a trailer located on a site which she rented at the Big Beach trailer park. She loved her trailer because it was the only home she ever lived in that she owned. “It’s my little bit of heaven here on earth,” she would say. She bought the trailer with a $10,000 down payment, the proceeds of
her late husband’s life insurance policy. She financed the remainder of the purchase price, $50,000, with a loan and mortgage from the Warm Fuzzy Finance Co. ("WFFCO"). Each month she made a mortgage payment from her modest Social Security check.

Of all her possessions, next to her trailer Cecily loved best the hi-def television set that her children gave her for Christmas.

Earlier this month, the trailer was removed from Big Beach trailer park by repossession specialists employed by WFFCO. Cecily protested, standing in the doorway of the trailer and shaking her umbrella at the repo men. She told the repo men that they were making a mistake.

“That’s what they all say, lady,” replied one of the repo men.

Cecily refused to step down from the doorway and fell from the trailer as it was being pulled away, suffering a broken hip. She is currently in the hospital.

In fact, WFFCO’s repo men had erroneously repossessed Cecily’s trailer, mistaking it for an identical trailer which was the property of Stranger who had fallen behind on his mortgage payments to WFFCO. Cecily was current in her payments.

Cecily’s daughter Clarissa is enrolled in law school. She told her Torts professor the foregoing story. The professor said that he thought Cecily would have a hell of a good lawsuit. He also advised Clarissa to inspect the trailer at WFFCO’s tow lot. Upon doing so, Clarissa discovered that a small section of the trailer had been dented while it was in WFFCO’s possession. It will cost $500 to repair the dent. Clarissa also discovered that the hi-def television set was missing.

For what intentional torts, if any, can Cecily recover from WFFCO?
QUESTION THREE

You are the clerk to the judge presiding at trial in the case of Jones v. Jolly Boat Co. ("Jolly Boat"). The evidence has been completed and the defendant has moved for a directed verdict. Both the plaintiff and the defendant have filed requests for jury instructions in the event that the motion is denied. The judge has asked you to review the record and write a memorandum on whether the motion for directed verdict should be granted and on which of the jury instructions should be given.

Jolly Boat manufactures motorboats for recreational use. David Jones bought a boat new from Jolly Boat in 1988. Two years ago he was operating the boat when it struck a submerged log, throwing him overboard. The motor continued to run. The boat circled back upon Jones. The propeller struck him, causing his death. The complaint alleges that Jolly Boat was negligent in failing to equip the boat with a "kill switch" which would have stopped the motor as soon as Jones was thrown from the boat.

Jolly Boat presented evidence that, when Jones bought the boat in 1988, no boat manufacturer installed kill switches as standard equipment. They had been an optional feature with some manufacturers, including Jolly Boat, beginning in 1970, but they proved to be unpopular. They occasionally malfunctioned causing motors to be unstartable. In addition, users were apt to trigger the switches inadvertently when they moved away from the motor to perform some task towards the bow of the boat. The few customers who bought boats equipped with kill switches from Jolly Boat soon had them disabled, and Jolly Boat stopped installing the switches in 1978.

Mrs. Jones, the plaintiff in this wrongful death action, introduced evidence that kill switches were relatively inexpensive. As public attention to the hazards of
MIDTERM EXAMINATION
COMPLETE ANSWERS

QUESTION ONE

This Question One consists of ten short-answer questions. Write your answers directly on this examination paper in the blanks provided.


The plaintiff went to the defendant hospital for surgery to correct a problem with her feet called “hammer toes.” The surgery was performed by a board-certified podiatrist, who was a defendant in the plaintiff’s subsequent lawsuit. The plaintiff was placed under general anaesthesia by the second defendant, a board-certified anaesthesiologist. Both of these defendants were employees of the defendant hospital.

When the plaintiff awakened in the recovery room, she discovered that her front teeth were missing. They were her natural teeth and were present when she went under the general anaesthesia. The plaintiff admits that she has no idea how she lost her teeth.

In order to oppose defendants’ motion for summary judgment, on what doctrine of tort law will plaintiff rely?

Res ipsa loquitur
Question 2. In Nixon v. Mr. Property Management, 690 S.W. 2d 546 (Tex 1985), the plaintiff, Debbie, aged ten, resided at the Landmark Apartments. At about 7:00 P.M. on an August night a young man abducted her from a sidewalk outside the Landmark Apartments and dragged her to the Chalmette Apartments across the street where he raped her, put her in a closet, told her not to leave, and disappeared. There are no other known witnesses.

Debbie can introduce evidence of the dilapidated condition of the apartment unit where the rape took place. The glass was broken from the windows and the front door was off its hinges. The unit was empty, filthy, and full of debris.

Debbie can also introduce into evidence the State Building Code. The Building Code contains minimum standards for property owners, including the following:

Property standards. An owner shall: * * *

(6) keep the doors and windows of a vacant structure or vacant portion of a structure securely closed to prevent unauthorized entry.

Violation of the Building Code is punishable by a fine of $1000.

Debbie sued the owner of the Chalmette Apartments. In order to oppose defendant's motion for summary judgment, on what doctrine of tort law will Debbie rely?

Negligence per se

Question 3. The elements of the tort claim called “conversion” are:

1. Volitional and wrongful
2. exercise of dominion and control
3. over chattel property as to which plaintiff has the right of possession or ownership,
4. So substantial that defendant should be required to pay plaintiff the full value of the property.
Questions 4-5. Desperate for money, Sylvia pawns her fur coat at Benny’s Pawnshop for a $500 loan. In which of the following cases could Sylvia recover against Benny for conversion of the coat? Answer “Yes” or “No.”

4. Before repaying the loan, Sylvia demanded return of her coat so that she could wear it to a party. Benny refused to give it back.

Answer: No.

5. A burglar broke into Benny’s Pawnshop and stole Sylvia’s coat.

Answer: No.

Question 6. In the famous case of United States v. Carroll Towing Co., casebook p. 141, Judge Learned Hand spoke of three variables: (1) “P,” the probability of a bad outcome occurring; (2) “L,” the severity of the outcome that would result; and “B,” “the burden of adequate precautions.” The negligence at issue was failure to have a barge attendant (“bargee”) on board. The events took place in New York harbor during World War II.

If these events had taken place instead in a quiet, idle harbor during peacetime, would P, L and B go up, or down?

[Question deleted because too ambiguous. All answers were scored as correct].

Question 7. The elements of the tort claim called “battery” are:

1. Intent;
2. Harmful or offensive touching of another.
Question 8. 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 claim is based on battery. The element of Plaintiff’s battery claim that is missing or in doubt is:

Intent.

Question 9. The elements of the tort claim called “assault” are:

1. Intent;
2. plaintiff’s apprehension
3. Of an imminent harmful or offensive touching.

Question 10. 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 or in doubt is:

An imminent harmful or offensive touching.

QUESTION TWO

Because the question asks about intentional torts, this answer ignores negligence even though it is obvious that WFFC was negligent.

Trespass to land. WFFC has trespassed on the trailer which Cecily owns and on the land which she rents.
**Assault.** Standing in the doorway when the tow truck started up, Cecily perceived that she was about to fall to the ground.

**Battery.** Cecily was injured when she fell to the ground, a harmful touching. WFCC’s intent is fulfilled by its intentional towing of the trailer. Alternatively, intent is fulfilled by transferred intent from the trespass tort.

**Conversion of the trailer.** WFCC’s total deprivation of Cecily’s trailer is sufficient to constitute conversion. However, since Cecily wants the trailer back, she will settle for the remedy for

**Trespass to chattels.** Cecily will be entitled to damages for the dent ($500) and for the rental value of the trailer during the period of deprivation.

**Conversion of the TV.** The TV being stolen and not returned, Cecily will be entitled to damages at its market value.

**Intentional infliction of emotional distress.** Cecily’s emotional distress may safely be assumed to be severe. However, there is a question if WFCC’s acts would be found to be extreme and outrageous. A jury might consider that the employees were acting on a good-faith mistake. Otherwise, however,

**Mistake no defense.** WFCC’s employees’ mistake does not negate the element of intent and will not provide WFCC with a defense to any intentional tort.

**QUESTION THREE**

The Court [should] [should not] grant Jolly Boat’s motion for a directed verdict. Explain.

**Causation.** Mrs. Jones bears the burden of proving, more likely than not, that the absence of a kill switch on Jones’s boat in fact caused his death. Even if she gets past causation in fact she must also prove, more likely than not, that absence of a kill switch was the proximate cause of Jones’s death. Was Jones’s bad boatsmanship, instead, the proximate cause? Or did Jones cause his own casualty when he chose to operate a boat without a kill switch?
Industry custom. Industry custom is evidence of a standard of care as indicated in Trimarco v. Klein, CB p. 150, because widespread custom tends to prove the socially accepted proper balance of risk versus utility. However, the custom of an industry, even if shown to be widespread, is not conclusive because an entire industry may lag behind acceptable safety standards.

Exclusive reliance on industry custom also provides no incentive for an industry to improve safety. Had boat manufacturers been installing kill switches on all new boats in the 1970's, it is safe to infer that the technology would have advanced much faster. There is an analogy to automobile airbags which also sometimes malfunctioned when first put into use. Note that the kill switch was well known in 1988, and its universal use in new boats today indicates that a safer technology was and is available.

Risk-utility analysis. As an alternative to reliance on industry custom, Mrs. Jones would urge the Court to evaluate Jolly Boat’s negligence in accordance with the risk-utility calculus suggested by Judge Hand in United States v. Carroll Towing, CB p. 141. The risk of this accident happening is small but not unforeseeable, the loss (death by casualty or drowning) is great, and the burden of installing an inexpensive kill switch is small. Boat manufacturers might have done better to install kill switches on all new boats, even in 1988, and let the boatowner take on the onus of disabling the device. (There is an analogy to automobile seat belts here).
boating increased in the 1980's, kill switches began to be installed more and more frequently. Today they are routinely included in all boat and motor designs. Their design has been significantly improved so that they avoid most of the problems associated with the first generation of kill switches.

In the event that the motion for directed verdict is denied, Jolly Boat has requested that the jury be instructed that in determining whether Jolly Boat was negligent it should give great weight to the custom in 1988 of not having kill switches on motorboats. Mrs. Jones has requested that the jury be instructed that, under the circumstances, little if any weight should be given to the custom upon which Jolly Boat relies, and that the jury should be free to make its own determination as to whether the failure to fit Jones's boat with a kill switch was negligent.

Write the memorandum requested by the judge.

END OF EXAMINATION
TORTS
Mr. Martin
March 27, 2009

Examination identification 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 ten 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 a blue book or blue books. Please write legibly and leave a margin on the left-hand side of the page in your blue book or blue books.

Use only your examination identification number to identify this examination paper and your blue book or blue books. (Your exam ID number is the last six digits of your social security number followed by the number 59. Therefore, if your social security number is 123-45-6789, your exam ID number will be 45678959). If you use more than one blue book, please be sure that your exam ID number is on each one 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.”
QUESTION ONE

This Question One consists of ten short-answer questions. Write your answers directly on this examination paper in the blanks provided.

Question 1. The elements of the tort claim called “battery” are:
   1. ____________________________________________, and
   2. ____________________________________________.

Question 2. The elements of the tort claim called “trespass to land” are:
   1. ____________________________________________, and
   2. ____________________________________________.

Question 3. The elements of the tort claim called “negligence” are:
   1. ____________________________________________,
   2. ____________________________________________,
   3(a). ____________________________________________,
   3(b). ____________________________________________, and
   4. ____________________________________________.
Question 4. The elements of the tort claim called “false imprisonment” are:

1. ___________________________________,

2. ___________________________________,

3. ___________________________________, and

4. ___________________________________

Question 5. Passenger departed on a cruise ship knowing that it would be a rough voyage because of predicted storms. The cruise ship was equipped with lifeboats, but not the type of lifeboat required by the applicable statute.

Passenger was swept overboard and drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.

Passenger’s representative brought an action against the operator of the cruise ship, seeking to prove negligence per se by reason of the statutory violation. In Passenger’s representative’s negligence action, what element is missing or in doubt?

Question 6. Driver was driving his car near Owner’s house when Owner’s child darted into the street in front of Driver’s car. As Driver swerved and braked his car to avoid hitting the child, the car skidded up into Owner’s driveway and stopped just short of Owner who was standing in his driveway and had witnessed the entire incident. Owner suffered severe emotional harm from witnessing the danger to his child and to himself. Neither Owner nor his property was physically harmed.

Owner brought an action of trespass to land against Driver. The element of Owner’s trespass claim that is missing is:
Question 7. Del’s sporting goods shop was burglarized by an escaped inmate from a nearby prison. The inmate stole a rifle and bullets from a locked cabinet. The burglar alarm at Del’s shop did not go off because Del had negligently forgotten to activate the alarm’s motion detector.

Shortly thereafter, the inmate used the rifle and ammunition stolen from Del in a shooting spree that caused injury to several people, including Paula.

If Paula brings an action against Del for negligence, seeking damages for the injury she suffered, what element of Paula’s negligence claim will be in doubt?

Question 8. Police officer Blueflash came to the house that Polly Plumjelly shared with her father and arrested the father on a warrant. Polly grabbed her video camera and videotaped the arrest, which was not without violence. Polly next drove to the police station in anticipation of her father being brought to the lockup. Video camera in hand, she waited at a non-public entrance to the police station where patrol wagons discharged prisoners. When officer Blueflash arrived, accompanying her father who was in handcuffs, Polly insisted that she be allowed to enter the station with her father.

Officer Blueflash refused, directing Polly to the public entrance at the front of the police station. When Polly insisted on entering with her father, Blueflash replied, “If you come through this door I will arrest you.”

Polly brought an action against Blueflash and the police department for civil rights violations and false imprisonment. The element of Polly’s false imprisonment claim that is missing is:
Questions 9-10. Questions 9 and 10 are based on the following fact pattern:

Chuck obtained a permit to cut firewood in the national forest. He drove his pickup to the designated area and began to cut down a marked tree with his new axe. Chloe, a member of the Green Militant movement, approached Chuck and berated him for cutting the tree. (Green militants advocate a total ban on the killing of plants). Chuck told her that he had a permit to cut, and to leave him alone. Chloe persisted, however, shouting “Plantkiller!” Intending to frighten Chloe, Chuck swung his axe as if to strike her. The manufacturer of the axe had neglected to insert the metal wedge that secures the handle to the blade, and Chuck’s earlier chopping had loosened the head. The axe head flew off the handle, striking Chloe and breaking her clavicle.

9. If Chloe brings an action for battery against Chuck, what element will be missing or in doubt?

10. On what doctrine of tort law will Chloe rely in order the supply the missing element?

QUESTION TWO

In a recent New Jersey case the parents of Adam, a deceased teenager, sued his teen-age friends Bob, Cara, Donald and Emily. The five had gathered in Adam’s second-floor bedroom at 6:00 P.M. to celebrate Bob’s birthday. Adam’s father was watching television downstairs.

At some point during the evening Adam produced an unloaded revolver and ammunition, both of which were examined by all of the teenagers. The discussion turned towards another friend of theirs who had died while playing Russian Roulette. Adam indicated that he wanted to play this game.
Donald explained to the group that in Russian Roulette one bullet only is loaded into the revolver. The participant spins the revolver’s cylinder, places the gun to his temple, and pulls the trigger. Emily said she found this “too scary,” left the room, and went home. She did not, however, say anything to Adam’s father.

As the remaining three friends watched, Adam loaded the revolver, spun the cylinder, placed the revolver to his temple, and pulled the trigger. The revolver did not fire.

All four of the friends experienced a passionate surge of relief when this happened. Cara kissed Adam on the mouth. Adam said that he was going to play the game again. Donald said he couldn’t stand to watch Adam another time, left the room, and went downstairs to watch TV with Adam’s father. He didn’t say anything to Adam’s father about what was going on upstairs.

As the two remaining friends watched, Adam repeated the Russian Roulette ritual. The gun went off, killing him.

Can the friends, or any of them, be found liable for Adam’s death? Why or why not? If you find that one or more, but not all, could be liable, explain what makes the difference.

QUESTION THREE

On a Sunday evening at 10:00 P.M. Molly Bygolly boarded an Everlate Airlines flight at Caribou, Maine, with non-stop service to Boston. The plane taxied away from the terminal but then stopped on the tarmac for 45 minutes. Finally the pilot made an announcement: “Due to mechanical problems, we will need to change equipment. We apologize for any inconvenience, and we thank you for flying Everlate Airlines.”

Shortly thereafter, flight attendants ushered Molly and the other passengers out of the plane and onto a waiting bus. Molly assumed that the bus would take her to another plane. Within minutes, however, Molly realized that she was wrong. The bus left the airport and was driving to Boston.
Molly desperately wanted to get off the bus. But neither she, nor any other passenger, expressed such a sentiment to the driver. The bus finally reached Boston at 6:00 on Monday morning. Molly has come straight to your office, asking you to file a false imprisonment claim against Everlate Airlines.

Evaluate the claim.

END OF EXAMINATION
MIDTERM EXAMINATION
COMPLETE ANSWERS

QUESTION ONE

QUESTION ONE consisted of ten short-answer questions.

Question 1. The elements of the tort claim called “battery” are:

1. Intent, and
2. Harmful or offensive touching of another.

Question 2. The elements of the tort claim called “trespass to land” are:

1. Intent, and
2. Entry on real estate in possession of another.

Question 3. The elements of the tort claim called “negligence” are:

1. Duty;
2. Breach;
3(a). Causation in fact;
3(b). Proximate cause, and
4. Damages.

Question 4. The elements of the tort claim called “false imprisonment” are:

1. Intent;
2. Confinement of a person within a bounded area;
3. By force or threat of force (credit given for “against his will”);
4. Plaintiff is conscious of confinement, or else suffers actual harm.
Question 5. (Bar exam question). Passenger departed on a cruise ship knowing that it would be a rough voyage because of predicted storms. The cruise ship was equipped with lifeboats, but not the type of lifeboat required by the applicable statute.

Passenger was swept overboard and drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.

Passenger’s representative brought an action against the operator of the cruise ship, seeking to prove negligence per se by reason of the statutory violation. In Passenger’s representative’s negligence action, what element is missing or in doubt?

Causation in fact.

Question 6. (Bar exam question). Driver was driving his car near Owner’s house when Owner’s child darted into the street in front of Driver’s car. As Driver swerved and braked his car to avoid hitting the child, the car skidded up into Owner’s driveway and stopped just short of Owner who was standing in his driveway and had witnessed the entire incident. Owner suffered severe emotional harm from witnessing the danger to his child and to himself. Neither Owner nor his property was physically harmed.

Owner brought an action of trespass to land against Driver. The element of Owner’s trespass claim that is missing is:

Intent.

Question 7. (Bar exam question). Del’s sporting goods shop was burglarized by an escaped inmate from a nearby prison. The inmate stole a rifle and bullets from a locked cabinet. The burglar alarm at Del’s shop did not go off because Del had negligently forgotten to activate the alarm’s motion detector.

Shortly thereafter, the inmate used the rifle and ammunition stolen from Del in a shooting spree that caused injury to several people, including Paula.

If Paula brings an action against Del for negligence, seeking damages for the injury she suffered, what element of Paula’s negligence claim will be in doubt?

Proximate cause.
Question 8. (Real case). Police officer Blueflash came to the house that Polly Plunjelly shared with her father and arrested the father on a warrant. Polly grabbed her video camera and videotaped the arrest, which was not without violence. Polly next drove to the police station in anticipation of her father being brought to the lockup. Video camera in hand, she waited at a non-public entrance to the police station where patrol wagons discharged prisoners. When officer Blueflash arrived, accompanying her father who was in handcuffs, Polly insisted that she be allowed to enter the station with her father.

Officer Blueflash refused, directing Polly to the public entrance at the front of the police station. When Polly insisted on entering with her father, Blueflash replied, “If you come through this door I will arrest you.”

Polly brought an action against Blueflash and the police department for civil rights violations and false imprisonment. The element of Polly’s false imprisonment claim that is missing is:

Confinement within a bounded area.

Questions 9-10. Questions 9 and 10 are based on the following fact pattern:

(Bar exam question). Chuck obtained a permit to cut firewood in the national forest. He drove his pickup to the designated area and began to cut down a marked tree with his new axe. Chloe, a member of the Green Militant movement, approached Chuck and berated him for cutting the tree. (Green militants advocate a total ban on the killing of plants). Chuck told her that he had a permit to cut, and to leave him alone. Chloe persisted, however, shouting “Plantkiller!” Intending to frighten Chloe, Chuck swung his axe as if to strike her. The manufacturer of the axe had neglected to insert the metal wedge that secures the handle to the blade, and Chuck’s earlier chopping had loosened the head. The axe head flew off the handle, striking Chloe and breaking her clavicle.

9. If Chloe brings an action for battery against Chuck, what element will be missing or in doubt?

Intent.
10. On what doctrine of tort law will Chloe rely in order the supply the missing element?

**Transferred intent.**

**QUESTION TWO**

The question doesn’t tell you how old the teenagers were. Generally, minors under age sixteen are not held to an adult standard of care unless engaging in activities appropriate only for adults. Perhaps handling a firearm is such an activity.

The harm that befell Adam was certainly foreseeable and known to the teenagers. An argument can be made that a reasonable person would have tried somehow to stop Adam from engaging in the Russian roulette “game.”

However, for the purposes of the law of negligence the first question is: were Bob, Cara, Donald and Emily, or any of them, under a duty to intervene in some way in the tragic events? At common law there is no duty to go to the aid of another, unless a special relationship exists. A moral duty to act may exist, but that is not the same as a legal duty. Inaction is less likely than action to lead to liability for negligence, because the law is more concerned with preventing people from doing harm than with forcing them to do good.

Also, the question must be asked: what could any of the four done? Adam held a loaded revolver. Any attempt to take it away from him, whether by one of the friends or by his father, carried a risk of death to others.

The next issue is causation. Can you confidently assert that, but for the inaction of his friends, Adam would not have killed himself?

Even if causation in fact is asserted, the problem of proximate cause remains. At common law there is no liability for “causing” the suicide of another because the suicide victim’s own act is considered the sole proximate cause of his death.
Adam's parents might assert that the four friends are liable as joint enterprisers with Adam. They might point to Donald's explanation of the "game" and to Cara's kiss as inducements to Adam.

Assuming that the parents have put together a prima facie case, the four could defend that Adam assumed the risk of his own conduct. In a comparative negligence jurisdiction they would point out that any negligence on their part was slight compared to Adam's own negligence.

[The question was derived from Theobald v. Dolcimascola, 299 N.J. Super, 690 A.2d 1100 (1997), where the court held that there was no duty upon the teenagers and, therefore, no negligence].

QUESTION THREE

The elements of a prima facie case of false imprisonment are: (1) intent; (2) confinement of a person within a bounded area; (3) by force or threat of force; and (4) the plaintiff is conscious of confinement, or else suffers actual harm.

1. Intent. Employees of the airline "ushered" Molly and the other passengers to the bus. That word implies an intent. It wasn't accident or carelessness that got Molly onto the bus. The airline had no motive to confine Molly against her will, but motive is to be distinguished from intent.

2. Confinement. Once the bus started moving, Molly was confined to it. As to the argument that she had only to ask to be released, see below under "reasonable means of escape."

3. Force or threat of force. To understand how this element might be found to be met, consider as a hypothetical alternative that airline employees padlocked the bus door with the passengers inside. There would be no doubt that the passengers were being held by force. Without the padlock but so long as the bus was moving, analogously, the passengers were equally imprisoned in it.
Ambiguity arises because we don’t think of an event so ordinary as a bus ride to be the use of “force.” Some people wouldn’t find this element to be met unless Molly asked to be let off the bus and the bus driver refused her request.

**Consciousness of confinement.** Molly was certainly conscious of her confinement. She didn’t sleep through the entire event.

**Defense: reasonable means of escape.** Many students asserted that Molly could have escaped from the bus by asking the driver to let her off, and so had a reasonable means of escape. To evaluate this defense, remember that northern Maine is wilderness. To be let off by the side of the road in the middle of wilderness, in the dead of night, and without alternative means of transportation, would strike most people as unreasonable.

**Defense: consent.** Molly didn’t communicate any displeasure to the bus driver. The driver could reasonably rely on her objective behavior as consistent with consent, as in *O’Brien v. Cunard S.S. Co.*, casebook p. 91. However, consent induced by untrue or misleading representations by others is not valid consent, and the pilot’s reference to “change equipment” was arguably misleading.