

UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW
Torts II
Spring 2012

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MIDTERM QUIZ

Closed-book. Half hour.

Write your name here: _____

All quiz materials (including this booklet and the answer sheet) must be turned in at the end of the period. You will not receive credit unless you return this booklet with your name written above.

Do not turn the page until instructed to begin.

Notes and Instructions

1. You may write anywhere on the quiz materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
2. During the quiz: You may not consult with anyone – necessary communications with the professor being the exception. You may not view, attempt to view, or use information obtained from viewing student answer sheets or from viewing any materials other than your own.
3. After the quiz: You may discuss the quiz with anyone, except that you may not discuss the quiz, at all, with any enrolled member of the class who has not yet taken the quiz.
4. All facts take place in the United States, unless otherwise noted. Except where a question (including the responses offered therefor) specifically identifies the name of a real state, e.g., North Dakota, you must answer the questions based on the federal law, prevailing common law and typical state statutory law in the United States, including all rules, procedures, and cases as presented in class, as well as, where appropriate, the theory and history discussed in class.
5. Each correct answer is worth one point. There is no penalty for incorrect answers.
6. This quiz is “closed book.” You may not use any materials at all, other than writing instruments and the materials provided as part of the quiz.
7. Do not assume any additional facts not presented in the questions.
8. Choose the most accurate answer based on course lecture and assigned materials. Each question has only one correct, most accurate answer. Where two or more choices appear accurate, the correct answer is the answer that refers to each and every accurate response.
9. All quiz materials, including this booklet, any scratch paper you use, and your answer sheet, must be turned in at the conclusion of the period for taking this quiz.
10. Subsequent to the quiz’s administration, in the sole discretion of the instructor, if error or irregularity is discovered, any affected question may be thrown out, or alternative answers may be given credit.

1. Jolene is an employee of Landattle Grace Hospital, where she works in the billing department. One day, while operating the Hexetron Docuspew 5000 photocopier, Jolene encounters a paper jam. Following the instructions on the machine, Jolene opens a door and places her hand inside to remove the jammed piece of paper. Without warning, the Docuspew 5000 suddenly starts up and the fuser clamp-arm comes down on Jolene's hand, giving Jolene burns and lacerations. It turns out that this particular Docuspew 5000 was manufactured with a door-latch interlock that failed to function correctly because of a problem with the plastic-injection molding used to fabricate the door-latch. Ordinarily, the door-latch interlock would have prevented the fuser claim-arm from operating when the door was open. Because of the faulty part, however, the interlock system failed to prevent the Docuspew 5000 from injuring Jolene. Sadly, Landattle Grace Hospital actually knew about this problem with the photocopier, since another office worker was hurt the same way earlier in the week. At that time, however, Landattle Grace Hospital management decided not to take the machine out of service, even temporarily, because doing so would have delayed end-of-the-month patient billing tasks.

Assume that Landattle Grace Hospital was negligent and that Landattle Grace Hospital has liability insurance that indemnifies it against all claims for negligence.

Note the following statements:

- I. Jolene can recover from Landattle Grace Hospital in tort for negligence.
- II. Jolene can recover from Hexetron in tort for strict products liability on the basis of a design defect.
- III. Jolene can recover from Hexetron in tort for strict products liability on the basis of a manufacturing defect.

Which answer below identifies each and every correct statement of the above-numbered list?

- (a) II only
 - (b) III only
 - (c) I and II only
 - (d) I and III only
 - (e) Neither I, II, nor III
-
2. Which of the following situations is least likely to give rise to strict liability?
 - (a) A nuclear reactor at a power plant melts down.
 - (b) A fireworks factory in a residential area explodes.
 - (c) A roller coaster at an amusement park collapses.
 - (d) A snake escapes from a zoo and bites someone.
 - (e) One of a herd of sheep escapes its pen, breaks down a neighbor's garden fence, and proceeds to eat all the flowers.

3. Which of the following statements is not accurate?
- (a) Restitutionary remedies offer an alternative to compensatory damages in some cases.
 - (b) Restitutionary remedies center around a notion of “unjust enrichment.”
 - (c) Restitutionary remedies may be either legal or equitable.
 - (d) Restitutionary remedies are typically measured by the amount of harm suffered by the plaintiff.
 - (e) Examples of restitutionary remedies are replevin, ejectment, constructive trust, equitable lien, and quasi-contract.
4. In which of the following situations is Farmer Fran most likely to be liable on the basis of strict liability?
- (a) Farmer Fran’s prize dairy cow escapes and munches on the neighbor’s crops.
 - (b) Farmer Fran’s prize dairy cow kicks a visitor in the knee.
 - (c) Farmer Fran serves tainted milk to a houseguest.
 - (d) Farmer Fran tells everyone in the county that Rancher Ron has been poisoning her livestock – something that Farmer Fran honestly believes, but which she should have realized was false.
 - (e) Farmer Fran goes downtown in a horse-drawn wagon with large iron jugs of milk for market. When the manager of the Cut’n’Run convenience store refuses to buy the milk, explaining that he doesn’t think stores have purchased milk this way in decades, Farmer Fran freaks out, lifting a jug over her head and bashing the manager with it.



FIG 1:
Farmer Fran's boys are always up early in the morning milking the cows.

5. The Faldrich family has had its travails. But nothing beat the scene at the family picnic recently when cousins Athena, Brianne, Camden, Dallas, Elijah, and Zachariah were all invited to Elijah's house for grilled food and a friendly game of badminton.

Late, as usual, Zachariah strode over the green grass to the picnic table, and, without saying a word, picked up a full soda can and threw it at Brianne, intending to throw it about 12 inches to her left. Instead, he missed his mark wide right and hit Brianne square in the face, which startled Athena who, standing to Brianne's immediate right, thought she was about to be hit in the face. Brianne crumpled to the ground. Until the soda can actually impacted her face, Brianne was convinced it would just miss.

"Zachariah, you obviously haven't changed!" yelled Elijah. "Get out of here right now!"

"Screw you!" yelled Zachariah. And with that, Zachariah went over and picked up Camden's prized badminton racket and held it menacingly in front of his lips. Preying upon Camden's germophobia, Zachariah proceeded to slowly lick the badminton racket like an ice cream cone, after which he then bent the aluminum frame over his knee.

"Go home right now, Zachariah!" Elijah called. "I'll call the police if I have to. And I don't care if you are on probation!"

"Just one more thing," Zachariah yelled back. He then grabbed the remote garage-door opener from a table and pressed the button to close the garage, trapping Dallas inside. In fact, Dallas never would have known how to get out if Elijah hadn't installed glow-in-the-dark tape to show the location of the side door.

Who does not appear to have a good cause of action for the tort specified?

- (a) Athena for assault
 - (b) Brianne for battery
 - (c) Camden for trespass to chattels
 - (d) Dallas for false imprisonment
 - (e) Elijah for trespass to land
6. Roger and Lucas are neighbors. There is no fence separating their backyard lots. One night both of them were sitting on their respective porches drinking beers. Roger, in particular, got quite drunk. Lucas yelled something at Roger that made Roger mad. So Roger walked over and punched Lucas in the face. Lucas, who had had a few drinks himself, saw the punch coming, but he was too slow to get out of the way. Roger did no damage to Lucas's land. Which of the following is most accurate?
- (a) Lucas has a claim against Roger for assault, battery, conversion, and trespass to land.
 - (b) Lucas has a claim against Roger for assault, battery, and conversion, but there's no claim for trespass to land.
 - (c) Lucas has a claim against Roger for battery, but not for assault, conversion, or trespass to land.
 - (d) Lucas has a claim against Roger for assault, battery, and trespass to land, but not conversion.
 - (e) Lucas has no claim against Roger.

7. Pilar won second place in a debate tournament. When she got home, she proudly placed her four-foot-high trophy on her front porch for everyone in the neighborhood to see. Dina, consumed with jealousy, taunted Pilar from the sidewalk and shot a rubber band at the trophy, which hit the golden winged figure at the top, doing no damage. Note the following:

- I. Trespass to land
- II. Trespass to chattels
- III. Conversion

Which answer below identifies each cause of action that lies on these facts?

- (a) I only
 - (b) II only
 - (c) I and II only
 - (d) I, II, and III
 - (e) None of I, II, or III
8. While James was vacationing overseas, Garth broke into James's basement and stole his 2,000 pound stock of copper bullion. At the time Garth took the bullion, copper was trading for \$3.00 per pound. Three months later, the price per pound of copper had ballooned to \$5.00, and Garth was able to clear \$10,000 by selling the metal. Which theory of remedies should James use to recover the \$6,000 worth of copper that was stolen plus the \$4,000 increase in value?
- (a) Ejectment
 - (b) Constructive trust
 - (c) Equitable lien
 - (d) Mandatory injunction
 - (e) Nominal damages



*FIG 2:
Some of the copper bullion
from James's basement
that was taken by Garth.*

9. Lilla and Milla are identical twins. Lilla is a well-known thug in the neighborhood. On Monday, Branford was walking to school when he encountered Lilla. She squinted her eyes and said, "I don't like the look of you. Stay out of this neighborhood. The very next time I see you, I'm going to cut you and break every bone in your body. No warning!" That Wednesday, Branford was walking to school when he saw Milla walking up to him. Branford froze. When Milla got very close, Branford punched Milla.

If Milla sues Branford, and if Branford pleads an affirmative defense based on the privilege of self-defense, which of the following best describes the most likely outcome?

- (a) Branford will not prevail with the defense, because Milla was not an aggressor.
- (b) Branford will not prevail with the defense unless Milla intended to be intimidating and threatening as she walked toward Branford.
- (c) Branford may prevail, but only if a reasonable person under the circumstances would have believed that Milla was imminently going to attack.
- (d) The defense will be deemed not procedurally necessary to the resolution of the case because Milla cannot establish a prima facie case for assault.
- (e) The defense will be deemed not procedurally necessary to the resolution of the case because Milla cannot establish a prima facie case for battery.

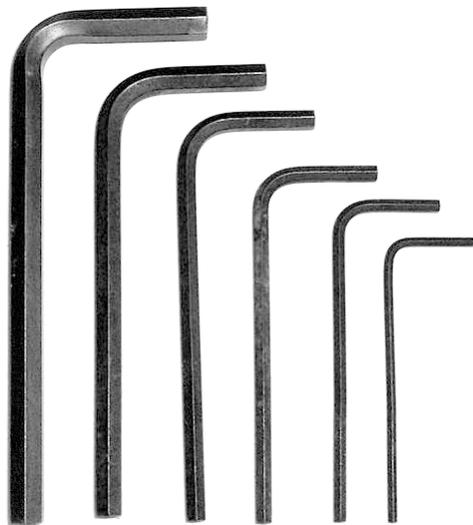
NOTE THE FOLLOWING FACTS FOR QUESTIONS 10 THROUGH 12:

Wyatt never signed up for the Hexetron Tool-of-the-Month Club. But that didn't stop Hexetron from signing Wyatt up. The company sent Wyatt a set of hex wrenches via the U.S. Mail, along with a bill for \$25 and a letter welcoming him as a member. Wyatt called up Hexetron and explained that he never ordered the tools or enrolled in the club. He also explained that under 39 U.S.C. § 3009(b), he had the right to keep the merchandise without paying for it. (He's correct on that law, by the way.) The Hexetron representative on the phone agreed, and told Wyatt to go ahead and keep the hex wrenches. She assured Wyatt that the Hexetron database would be revised to reflect that Wyatt owed nothing and that he was not an enrolled member of the Hexetron Tool-of-the-Month Club.

Several months later, Wyatt was using one of the hex wrenches to tighten a bolt on his lawn mower when the wrench snapped into jagged pieces, one of which badly gashed Wyatt's hand, requiring stitches and physical therapy. Then, a month or so after that, Wyatt received a bill from Hexetron Debt Collection Services for \$25 in past due amounts for tools, \$563 in interest charges and late fees, plus a \$300 early-termination fee for canceling membership in the Tool-of-the-Month Club before one year. The next day, Wyatt sent Hexetron a letter patiently explaining the error. The following week, he heard a loud knock on the door. He opened the door to find Hannah, a debt collector for Hexetron, dressed in a bright yellow radiation suit. Hannah raised an electronic bullhorn to her mouth and announced, "Wyatt is a deadbeat who doesn't pay his bills!"

Wyatt slammed the door on Hannah. The door struck the rim of the bullhorn and propelled it back into Hannah's face where it knocked out several of her teeth. Wyatt then collapsed on the floor suffering a mild heart attack, an event that was picked up by a portable EKG machine that Wyatt was wearing at the time.

10. If Hannah sues Wyatt for battery, which of the following must Hannah prove in order to succeed on her claim?
- (a) Wyatt was substantially certain that the door would strike the bullhorn.
 - (b) Wyatt was substantially certain that the bullhorn would hit Hannah's face.
 - (c) Wyatt acted with anger, or, at least, malice.
 - (d) Hannah had an immediate apprehension of the impact.
 - (e) Hannah was on Wyatt's property lawfully.
11. If Wyatt sues for outrage (intentional infliction of emotional distress), will his claim succeed?
- (a) Yes.
 - (b) No, because Hannah had an implied license to be on Wyatt's property.
 - (c) No, because Wyatt's mental distress was not sufficiently severe.
 - (d) No, because Wyatt would come to the court with unclean hands.
 - (e) No, because the claim would be barred by the doctrine of third-party estoppel.
12. If Wyatt sues for the injuries to his hand, will his claim succeed?
- (a) Yes, because Hexetron is absolutely liable for any injuries suffered through the use of their products.
 - (b) Yes, because the reasonable consumer would expect the wrench not to break under the circumstances in which Wyatt used it.
 - (c) No, because of a lack of privity.
 - (d) No, unless it can be shown there was a mental component to Wyatt's injury.
 - (e) No, because the utility outweighs the risk.



*FIG 3:
The hex wrenches Wyatt
received from the Hexetron
Tool-of-the-Month Club.*

THIS IS THE END OF THE QUIZ.