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Torts II

ESSAY
ISSUE
SPOTTER

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30/45 FORMAT PRACTICE FINAL ESSAY EXAM

Pinnacle Peak

PRACTICE EXAM NO. 1 FROM "COULISSE CANYON"

GENERAL INSTRUCTIONS:

1. All exam materials (including this booklet and your response) must be turned in at the end of the period. **You will not receive credit unless you return this booklet with your exam ID number written in the box above.**

2. Do not turn the page until instructed to begin.

3. Assume that today's date is the regularly scheduled date for the exam administration.

4. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.

5. Your goal is to show your mastery of the material presented in the Torts II course and your skills in analyzing legal problems. It is upon these bases that you will be graded.

6. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing materials other than your own.

7. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of exam information to the same.

8. Base your exam answer on the general state of the common law and typical 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, plus any hypothetical laws presented in the facts.

SPECIFIC INSTRUCTIONS FOR ESSAY:

9. You have a total of 1 hour 15 minutes.

10. 30-MINUTE RO PERIOD: The first 30 minutes is a reading-outlining period (RO Period). This is your time to carefully read the exam booklet (that is, the facts and the question or questions), take notes, to reference your outlines or books, and to outline your response on scratch paper. **During the 30-minute RO Period you may not begin recording the response upon which you will be graded.** That is, if you are taking the exam on computer, you may not type any characters at all into the exam response file on your computer during

the RO Period; and if you are taking the exam by handwriting, you may not make any mark in a blue book (that is, an exam-response booklet, sometimes labeled a "green book") during the RO Period.

11. 45-MINUTE EW PERIOD: **Next you will have a 45-minute exam-writing period (EW Period) during which you will write your response.** For the avoidance of doubt, it is acknowledged that during the EW Period you may also continue to do what is allowed during the RO Period (e.g., to refer back to the exam booklet, reference your notes and books, etc.), including notes you created during the RO Period.

12. It is appropriate, if you wish, to note differences between minority and majority approaches in your answer, as well as statutory or other differences among jurisdictions.

13. Within the confines of the questions you are asked, note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.

14. Organization counts.

15. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right place.

16. Feel free to use abbreviations, but only if the meaning is entirely clear.

17. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please use a separate bluebook for each question.

18. **Computers:** Please clearly label each question in your answer.

19. This Part II of the exam is administered on an "open-book basis." You may use any notes and books you like. No electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session. No materials may be shared during the exam.

20. This exam will be graded anonymously. You may not waive anonymity. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination ID number appropriately. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.

21. Good luck!

Pinnacle Peak

TERRENCE TURNER HAD ANYTHING BUT A SUNNY DISPOSITION. Which was ironic. Terrence, after all, was the newly installed Chief Enthusiasm Officer at Morgan Morgan & Co.

Morgan Morgan & Co. is a boutique investment bank that provides innovative capital solutions for high-risk/high-reward cutting-edge ventures. That is, Morgan Morgan & Co. gets financing for companies that are too risky to find financing elsewhere. The problem for Terrence was that the financial whizzes who worked for the bank acted bored and listless.

Terrence decided to take action. He dug in his desk for a business card he'd pocketed a while ago from Exotiquiest Extreme Expeditions Co., an adventure tourism operator. An employer-paid adventure-tourism activity was exactly the right prescription to perk up the esprit de corps.

Just a few weeks later, a group of 30 investment bankers from Morgan Morgan & Co. were trekking through the wilds of Coulisse Canyon on an expedition led by Exotiquiest's top guide, Nettie Naynor.

THE MORGANEERS' FIRST DESTINATION was Pinnacle Peak, a high point inside Coulisse Canyon National Monument that afforded views of most of the park.

"Just wait," Terrence said to the bankers against the impressive backdrop. "This is going to be amazing!"

People waited expectantly. But nothing happened.

An hour later, everyone was still waiting. People started to sit down. Many were yawning uncontrollably. For someone in Terrence's position, this was a disaster. The plan had been for the surprise appearance of Griff Gunderson, the chiseled celebrity naturalist of cable-television fame. Terrence had arranged for Griff to serve as an expert guide. But where was he? Terrence started dialing around trying to reach Griff by phone.

It was two hours after they arrived on Pinnacle Peak, and still nothing had happened.

"I am soooooo bored!" shouted one of the bankers to the heavens.

Terrence now wished he hadn't paid Griff in advance. Morgan Morgan & Co. had cut the celebrity a \$150,000 check for the weekend's worth of services. Of course, Griff had cashed it immediately. *Freaking*



FIG. 1: Inside Coulisse Canyon National Monument, the beautiful Cascade Waterfall is just a scenic hike away from Pinnacle Peak.

cable TV celebrities, Terrence thought. Finally, Terrence managed to reach Griff on the phone.

“Thanks for the 150 big ones!” Griff laughed uproariously. “You think I can be bought? You think I would sell out to an *investment bank*? I was never going to do that! You guys think you can bankroll polluters Monday through Friday and then buy a nature experience on the weekend? Go to hell, jackasses!”

Terrence dejectedly zipped the cell phone back into his cargo pants and explained to the Morganeers what had happened.

Most of the bankers shuffled their feet. Only two of them seemed to be amused: Jerica Jernigan and Kevin Karling, who were lurking in the back of the group bent over an iPad. They were having a good time, it turns out, because they were using an app to create a custom t-shirt design that they immediately offered for sale on the internet. Jerica had done the graphics and Kevin had come up with the text. It was an instantly recognizable likeness of Griff Gunderson. Underneath his face it said, “GRIFF GUNDERSON - GETTING YOU CLOSER TO NATURE*” – with the asterisk referring to a footnote in small print that said, “*by getting infected with sexually transmitted diseases from animals and spreading them to the human population!” Of course, this statement had no basis in fact. But given Griff’s absurdly close contact with animals on TV, it struck many people as very funny. Jerica and Kevin, at least, couldn’t stop snickering.

“Are we ready to have some fun?” Nettie the tourguide yelled enthusiastically. Other than some mumbled insouciant *not reallys*, the only response was from Jerica in the back. She piped up, “Me and Kevin are having fun. We’ve sold 56 t-shirts!”



FIG 2: *One of the Morganeers captured this uninspired picture of dirt on his cell phone during the two hours the bank employees waited futilely for Griff Gunderson on Pinnacle Peak.*

QUESTIONS

Analyze the issues as follows:

1. Morgan Morgan v. Griff Gunderson

Discuss any claim or claims Morgan Morgan has against Griff Gunderson. Include in your discussion whether Morgan Morgan may be entitled to punitive damages. Omit discussion of other remedies issues.

2. Griff Gunderson v. Jerica Jernigan & Kevin Karling

Discuss any claim or claims Griff Gunderson has against Jerica Jernigan and Kevin Karling. Omit discussion of remedies issues.

Note: Do not repeat the exact same analysis from question to question or from party to party. Instead, you may, if appropriate, incorporate previously stated analysis by reference. If analysis of an issue is similar to but not exactly the same as what you have written previously, then I suggest you note your prior analysis and go on to discuss any differences. Note that each question will not be given equal weight. Divide your time among the questions according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs.

Some suggested abbreviations for your answer:

Coulisse Canyon	CC
Griff Gunderson	GG
Jerica Jernigan	JJ
Kevin Karling	KK
Morgan Morgan & Co.	MM
Pinnacle Peak	PP
Terrence Turner	TT

CREDITS AND NOTES

The material in this box is not part of the hypothetical facts for the exam.

Fig. 1, photo "Waterfall near Twin Falls, Idaho in the Snake River Canyon" by Daniel Mayer, © 2004 Daniel Mayer, <https://en.wikipedia.org/wiki/User:Maveric149>, licensed under a Creative Commons Attribution-ShareAlike 3.0 License, available at <http://creativecommons.org/licenses/by-sa/3.0/>. Fig. 2 photo by Eric E. Johnson.

This practice exam was made by abridging the publicly released Spring 2015 Torts II exam, "Coulisse Canyon." Model answers for the original and this abridged version are available online at ericejohnson.com/exam_archive.