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FINAL EXAMINATION - ESSAY

Limited open-book. Two hours.

Write your exam number here: _____

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 number written above. Do not turn the page until instructed to begin.

Notes and Instructions

General Notes and Instructions

1. Assume that today's date is April 29, 2010, unless indicated otherwise.
 2. 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.
 3. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
 4. 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 other student examinations or from viewing materials other than your own.
 5. 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.
- Specific Notes and Instructions for ESSAY PORTION:**
- a. Unless expressly stated otherwise, assume that the facts recited herein occur within one or more hypothetical states within the United States. 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. 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.
 - b. Do not dwell on negligence or other topics from Torts I, to the extent you mention them at all.
 - c. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
 - d. Organization counts.
 - e. Be complete, but avoid redundancy. Specifically, do not repeat the exact same analysis with substituted parties. For instance, computer users should probably not use the cut-and-paste function. Instead, to the extent called for, you may incorporate analysis by reference to another portion of your answer.
 - f. Feel free to use abbreviations, but only if the meaning is entirely clear.
 - g. **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
 - h. This exam is "limited open book." The only materials to which you may refer during the exam, other than this exam booklet, scratch paper provided as part of the exam administration, and any special references specifically authorized by the Dean of Students office, are: (a) the authorized copy of the Spring 2010 Torts Wypadki, which will be distributed to you in the exam session, (b) a "reference sheet," consisting of a single 8.5-inch-by-11-inch sheet of paper, upon which anything may be written and/or printed, including on both sides, front and back, and (c) sticky tabs labeled with subject headings to insert into the wypadki, if you so choose. You may not consult or access any other piece of paper, including, but not limited to, a copy of the wypadki that you have printed out yourself. No materials may be shared during the exam.
 - i. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and may result in disciplinary action.
 - j. This Part Two is worth approximately two-thirds of your overall exam grade.
 - k. Good luck!

“Secret Agent Bride”

THERE WAS SO MUCH TO WORRY ABOUT. The caterer, the flowers, the detonators. Special Agent Bethany Banks tried to relax and take a deep breath. For a bride-to-be and covert operative of PATRIOT (“Protecting America Through Reconnaissance, Intelligence, and Operational Tactics”), there was always some detail that needed futzing over. And tomorrow was the big day. Honestly, she could concentrate better on serving her country if she felt more confident in her caterer’s ability to serve 300 guests their choice of chicken or a vegetarian option.

“What do you mean I should think about serving fish instead? Didn’t we have this nailed down two months ago? We paid for chicken. If you can’t deliver – wait, hold on. I have another call.” Bethany pressed a button on her phone.

“This is BLUEBIRD,” she said. “I am at ‘go’ status.”

“Copy that, BLUEBIRD,” the voice on the line said. “You are go for operation. Rules of engagement are weapons-free, authorization to kill.”

“Copy that. Out.”

Bethany rolled her eyes, blew the bangs out of her face, and clicked back over to the caterer. “Explain to me again why you can’t get chicken?”

IN KEEPING WITH HIS REGULAR MORNING RITUAL, George Gafford, mayor of the small town of Seashore Grove, Calizona, ordered a grandé café mocha and a peach muffin from the coffee cart on the promenade. He steadied himself on the railing that looked over the stairwell. His stomach was rumbling. It was nerves. In just about 30 hours, George was getting married.

“Hey handsome!!! What are you doing here?”

George felt fingers running through his hair. He whirled around. It was Mary McClintock, the maid of honor.

“Um. I come here every morning,” George said, flustered. “You?”

“Ooooh! Let me see that!” Mary squealed, grabbing George’s phone out of his hand. “Brand new, huh? Does it play games?”

“Be careful with that, okay?”

George grimaced helplessly as he watched Mary bobble the phone. Then, with a squeak of alarm, Mary fumbled the phone over the railing. As George gasped, it tumbled through the air and splattered on the hard floor below.

“Ooooh! Oh no!” Mary yelled. She dashed down the stairs ahead of George and picked up the pieces.



FIG. 1: Something borrowed, something blue. The Hrenka-Hübner HHK 9mm, a standard-issue sidearm for PATRIOT agents in the field. The steel of the firearm is “blued” in a passivation process that uses an oiled Fe₃O₄ finish to protect against rust and reduce the possibility of sunglint that might give away a shooter’s position.

“Look, I can fix this,” Mary said, returning with a fistful of pieces. “I have a friend who works right down the street at a cell-phone store. The SIM card is fine. That’s got your account information on it and everything. I’ll have a new phone for you in a couple of hours, put the SIM card in, and it will be just as good as new. I am so sorry. I’ll come by city hall and drop it off.” Mary was already running off. “I’m sooooo sorry! Just don’t tell Bethany. She’s got so much on her plate, she’ll completely freak if she thinks there’s something wrong with your phone and that her maid of honor is such an unreliable klutz!”

Before George could register much of a reaction, Mary was gone with what was left of his phone. Mary was probably right, George thought. Better not to mention this to Bethany. Based on how particular Bethany had been about the bouquet – to name just one thing – George figured it was better not to add any new stresses.

ACROSS TOWN, Ferdinand Flowers, who ran a floral business by the same name, was on the phone bragging to his brother about what he’d done for Bethany and George’s wedding.

“No I don’t have any white ogiku chrysanthemums for the church. Are you kidding? Those are pretty much impossible to get a hold of in Seashore Grove at this time of year. I knew I wouldn’t have any for her, but if I had been honest, I never would have landed the account. Everyone in this business promises what they can’t deliver! I am positive that Erica Ericsson would have promised Bethany white ogikus, even though Erica knows she can’t get them. I’m tired of losing business to Erica. Look, this is what I have to do to compete! Either way, Bethany wouldn’t have gotten white ogiku chrysanthemums. So what does it matter? I have a nice supply of carnations here. They’re kind of similar. And anyway, I did get Bethany magnolias for her bouquet, which is what she seemed most keyed up about.”

LATE THAT EVENING, Mary McClintock adjusted the volume and changed some settings on the audio processing panel. The signal was coming in crystal clear. She heard the sound of a parking break being pulled up and a key coming out of the ignition. George had just arrived at Bethany’s home. Using the secure comm-link, Mary sent a status update to Quentin Quelevalli, the mission leader and top-level crime-syndicate commander for DISTORTED (“Delivering International Strife Through Ochlocracy, Racketeering, Trickery, Extortion, and Deception”).



FIG. 2: An ogiku chrysanthemum.

Mary had already done a few things to add to the stress of Bethany’s wedding. The more stress, Mary figured, the more off-guard her rival would be. Mary scored big by interrupting the caterer’s supply of chicken, making him need to do a last minute meal substitution. Mary had also arranged for Bethany to receive rude handwritten notes in RSVP envelopes from a number of relatives who, in reality, had never received their invitations. Bugging George’s phone was Mary’s best accomplishment yet.

Over the next hour, Mary listened in on George and Bethany talking, but Mary got nothing useful. She was hoping to find out something about Bethany’s plans that she could use to create further disruptions. But it was all just George pouring his heart out to Bethany about his sordid childhood and how emotional he was about starting a family of his own. While the bug wasn’t turning out particularly helpful at the moment, Mary couldn’t help but congratulate herself on finding a way

to successfully eavesdrop on a trained operative of Bethany’s caliber. George was the weak link. He was now Mary’s pawn, having delivered a full suite of the latest electronic eavesdropping equipment straight to Mary’s target. George’s new phone had pinpoint GPS tracking and a continuous transmitting mode that worked even while the phone was off. The only thing it lacked was encryption for the outgoing audio signal. But what were the odds that someone else would be listening in?

A BLOCK DOWN THE STREET, Kevin Kurson typed in a few keystrokes and, obediently, his computer began using Kevin’s ham radio set to scan all frequencies. This was Kevin’s new hobby – born of necessity since his mom took away World of Warcraft by depriving him of his internet connection.

The computer blinked and beeped. It had found a new signal. Kevin had never heard anything on this frequency before. He put on his headphones. What the?

Oh, this was rich.

Using his phone, Kevin began tweeting¹ what he was hearing. Some of his tweets² were accurate, some were not. Although Kevin had had a publicly accessible account on Twitter for over a year, he had only two followers.³ So, he figured, best to spice it up.

Here is some of what Kevin tweeted:

No.	<i>Tweet text</i>	<i>Notes</i>
1	George is getting married tomorrow.	This was true, of course.
2	George says, “I’ve always been afraid of rejection since my pet bunny ran away when I was 9.”	True. Really, really embarrassing for George. But true.
3	George changed his last name to match his weird stepfather.	This is true, except that there was no indication that George’s stepfather was “weird.” In fact, he’s quite normal.
4	George now sobbing uncontrollably saying Bethany is hottest shorty ⁴ EVER.	Kevin made this up entirely, though it is true that George was, intermittently, softly crying. And it’s true that Bethany is quite attractive. George, however, would never use the word “shorty,” which he regards as vulgar and vaguely offensive.
5	George says he cannot function at work without advice from Bethany 5 times a day.	What George actually said to Bethany was, “I don’t feel like I can get through a day at the office without talking to you, like, five times, just to hear your voice.”

FIG. 3: Twitter activity of Kevin Kurson.

¹ “Tweeting” something means to upload and display it on the internet using the Twitter social networking website.

² A “tweet” is a message posted to the Twitter service.

³ On Twitter, a “follower” is someone who has signed up to have someone’s tweets fed directly to them for reading. Otherwise, a user must go to a person’s page to be able to see that person’s tweets.

⁴ A slang term used to refer to an attractive female.

THE DAY OF THE CEREMONY ARRIVED sunny and bright. For the sake of luck and tradition, George and Bethany weren't seeing each other until Bethany walked down the aisle. In the early afternoon, guests began filling in the pews of the Coast Community Church. The flowers were beautiful – though they were not what Bethany had wanted.

The main thing that Bethany was thinking about was Quentin Quelevalli – the leader of DISTORTED. There was about a one-in-five chance that Quelevalli would attend the wedding. He was the groom's father, after all. Bethany was just hoping against hope that he wouldn't show. The government had received specific, credible intelligence that DISTORTED was planning to detonate a nuclear weapon on the seafloor in order to trigger a massive earthquake, which could kill thousands in Calizona and greatly cripple the region's already struggling economy. PATRIOT judged that taking out Quelevalli was perhaps the only way to prevent disaster. Unfortunately for Bethany, her wedding was the only real chance PATRIOT had to draw Quelevalli out of hiding.

Mary McClintock arrived with some safety pins to help Bethany take care of a wardrobe issue.

"Can I help you with that?" Mary asked, moving toward Bethany's dress.

"No. I got it," Bethany said. "Thanks."

Bethany didn't want Mary to get close enough to feel the Hrenka-Hübner HHK 9mm that Bethany had strapped to her thigh. Mary had been Bethany's best friend since childhood, but Bethany had never divulged to Mary her identity as a secret agent. It's not that Bethany liked to keep secrets from her friends. Bethany had actually tried to bring Mary into the PATRIOT organization. In truth, Mary had all the right skills. But something in Mary's background had caused her to fail the security screen. Thus, Bethany was instructed not to recruit her. For Bethany, hiding her secret work from her best friend had been hard enough. Now Bethany was entering into a marriage without her husband-to-be knowing who she really was or what she really did. At least she'd be able to tell George after the wedding. PATRIOT had cleared her to tell her new husband the broad outlines of her work. Sharing that with someone would be a relief.

"Bethany," Mary smiled. "It's time."

"Mary, did George's dad show up?" Bethany asked.

"Yes, I think so. There's someone out there who looks like the picture you showed me. Near the back of the church – right by the side door."

"Oh." Bethany said. "Well, that's a good thing."

The miscreant was here. And, as Bethany had predicted, he was sitting all alone, right where she'd thought he'd be. Bethany had the charges already set under the back-row pew. It was go time. The remote detonator was hidden in Bethany's bouquet. Everything was set. Bethany clasped the flowers to her chest and walked to the door. She had given up so much in the service of her country. She had put off marrying George, the love of her life, for years. Now the day was finally here to begin the life she'd always wanted, and she was being asked to ruin her wedding with an explosion and the death of her groom's estranged father. She resented it deeply. She would do her duty; she would kill Quelevalli. But not until after the vows. Saving the world would just have to wait.

Damn it all: Bethany Banks was getting married today.

PACHELBEL'S CANON IN D MAJOR filled the church. A hush went through the crowd as everyone stood. Bethany was resplendent in a Monique Lhuillier gown. Her smile shone like a spotlight. As she proceeded down the aisle, she seemed to be floating.

After she joined George at the altar, Bethany handed the bouquet to Mary – just for the moment – so that George and Bethany could join hands while exchanging vows. Bethany gazed into George's eyes with a feeling of total calm.

"Do you, Bethany Banks," the minister began, "take this man, George Gafford, to be your lawful, wedded husband, to have and to hold, from this day forward, for richer or poorer, in sickness and in health, till death do you part?"

"I ... *DUCK!!!*"

Bethany grabbed George's head, pushed it down, and leapt on top of him, whirling around at the same time and coming up with her gun. Three gunshots had shattered the serenity, and Bethany had reacted. But what was going on? Had someone taken a shot at Quelevalli? Bethany scanned the church. Everyone was diving and screaming. But Quelevalli was still in position – unharmed. Bethany had just fractions of second to set off the charges before Quelevalli would get away. She needed the bouquet – but as Bethany turned, she witnessed Mary chucking the bouquet into the air, shouting "RUN QUELEVALLI!!!"

As Bethany began to pivot the gun toward her best friend, she felt her body flip up into the air. George was throwing her ... why? He was grabbing for something ... the bouquet! George stretched out his hand to give it back to Bethany. It was instinctual for George. He knew Bethany had obsessed about that bouquet. But he didn't know why. Bethany took the bouquet with her left hand. The terrible irony of it all – to take it from George and then use it to kill his father. A quick glance to the back of the church. Quelevalli was still there. She sunk her fingers through the cool thick petals. The button. She felt it. She pushed.

BOOM!

The charge was a small one, but it made a terrific noise, echoing through the church. Equivalent to a large-caliber shotgun, it was only meant to take out one person. And that it did – at least in part. Quelevalli crumpled to the ground. He was badly wounded. But he was alive. The church's great stained glass window fared less well. It exploded in a sparkling cascade of multi-colored fragments, lit brilliantly in the streaming sunlight, all of which rained down on the struggling Quelevalli.

Bethany, livid with shock and anger, now turned her gaze and her gun to her erstwhile best friend. Mary was in league with Quelevalli. That much was clear. The betrayal was impossible to comprehend. But Bethany forced herself to think beyond it. Bethany needed to act. She knew what she had to do. She had to take Mary out. And she had to do it now, before the backstabber helped Quelevalli escape.

Bethany aimed, pulled the trigger, then ... What? What had happened? It made no sense at first. Blood was shooting out of Bethany's hand. Her index finger was hanging in a bizarre way, connected to the rest of her hand only by tattered flesh. The gun had exploded as she held it. Wounded and afraid, Bethany turned to George.

But he was gone.

A sickening groaning sound now filled the church. Wood – warping, bending, and splitting. A set of rafters were giving way. One of the beams plummeted downward, where

it instantly killed Ullric Adelborg, as his daughter, Amalie Adelborg, looked on helplessly from arms-length away.

More screams. Dust everywhere. People dashing for the exits. Then the chaos subsided. Bethany looked across the pews to the back. There she saw George. He had pinned his father to the ground and was binding his hands with wire from a flower arrangement.

"Honey, I've got him!" George yelled across the church. "He won't get away."

Bethany slipped into unconsciousness.

"HONEY, EVERYTHING'S ALRIGHT," George whispered.

Bethany awoke in a hospital.

"I had a feeling you might be an agent with PATRIOT," George said. "Me too. Well, not an agent. But an analyst. They told me I could tell you after the wedding. So when all that happened - it all made sense. Headquarters just de-briefed me. Quelevalli is in FBI custody. They are interrogating him. It's great news, Bethany. The plot has been foiled. We are all safe. You literally saved the world, hon. Or, at least, a large chunk of Calizona."

"I'm so sorry about your father." Bethany said.

"He's never really been my father. In fact, I originally joined PATRIOT because I knew I could help find him," George said. "I'm glad he's met justice."

"What about Mary?" Bethany asked.

"She got away," George said. "The police are looking for her. And the shooter - we don't know who that was. We think it was someone sent by DISTORTED to protect the organization's interests at all costs."

"And my hand?"

"Your pistol was somehow weakened when Hrenka-Hübner blued the body," George explained. "The bluing was a special modification to the design requested by PATRIOT. It looks like Hrenka-Hübner used mass manufacturing techniques and skimmed on the work they were supposed to do. It's outrageous, because they charged PATRIOT a fortune to do the work by hand and to test each unit. The good news is that your hand is fully repairable. They've already done one surgery. After a second surgery, you should regain all function."

"What about the church coming apart?"

"That wasn't your fault," George explained. "The wooden rafters were compromised by termites. It was the church's negligence in not maintaining them. They were ready to fall in a day or two anyway. That's according to the inspector's report that PATRIOT obtained."



FIG. 4: The "official" seal of PATRIOT. The relationship that PATRIOT bears to the United States federal government is unclear. The organization seems to be "unofficially official," but "officially unofficial." Shadowy intelligence organizations are like that sometimes.

“We still need to get married.”

“Yes, my love,” George said. “I’ve got a minister right around the corner, should I ...”

“Yes. Get him.” Bethany smiled.

QUESTION

Analyze the parties’ claims and liabilities. Please organize your response, to the extent you reasonably can, in the following order, clearly labeling the subparts in your answer:

Subpart 1: Analyze the liability of Ferdinand Flowers, if any.

Subpart 2: Analyze the liability of Hrenka-Hübner, if any.

Subpart 3: Analyze the liability of Coast Community Church, if any.

Subpart 4: Analyze the liability of Kevin Kurson, if any.

Subpart 5: Analyze the liability of Mary McClintock, Quentin Quelevalli, and DISTORTED, if any.

Subpart 6: Analyze the liability of Bethany Banks, if any.

Subpart 7: Analyze the liability of PATRIOT and the United States of America, if any.

Subpart 8: Analyze the liability of George Gafford, if any.

Subpart 9: Analyze the liability of any other party, if any.

Here are a few things to keep in mind in writing your answer:

- It is entirely unclear whether PATRIOT is a federal agency or not. That being the case, please cover both bases and provide analysis for PATRIOT as an agency of the federal government and as a private organization to the extent it would make any difference in your analysis.
- The subpart structure is provided for organizational purposes. Do not think of the subparts as separate questions – they certainly will not be given equal weight. It may be entirely appropriate for one subpart to be answered with extreme brevity, while another subpart might require very detailed analysis. You should divide your time proportionately among the subparts according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs.
- Avoid needless repetition. (See item “e” in the notes and instructions.) Do not repeat the exact same analysis with substituted parties. Computer users should generally avoid the cut-and-paste function. You may incorporate analysis by reference to another portion of your exam answer to the extent appropriate.
- Keep in mind the subject matter of the Torts II course. Do not dwell on prima facie negligence or other concepts covered primarily in Torts I.

CREDITS: Illustration of gun by Eric E. Johnson based on original photograph by Michael Sullivan. Original photograph of flower by Laitche, modified by Eric E. Johnson. Seal based on existing U.S. government material. All other content by Eric E. Johnson.