
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 May 2, 2011, 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 the Essay:**
- 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 2011 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 essay portion is worth approximately two-thirds of your overall exam grade.
 - k. Good luck!

Kung Fu Car Wash

CARL CHEN HAD BEEN THE SOLE PROPRIETOR of the Buggy Bubbles Car Wash for seven years. Working long hours without a single day off, he managed to build up a loyal clientele of motorists who depended on his establishment to provide the frequent automotive ablutions necessitated by driving through the dusty desert-chaparral of Southern Nevizona.

The Buggy Bubbles facility is a tunnel-type automated wash with a 120-foot rear-wheel-push conveyor. Equipment includes a pre-soaker entry arch with a premium lights-and-graphics package, articulating/rotating rocker-panel brushes, reciprocating mitter curtains, quad-foamers, and a state-of-the-art collision avoidance system. The car wash became so well regarded in the community, even normally nervous owners of expensive and vintage automobiles came to trust Carl with their prized rides.

Carl took well-founded pride in his business. It was a long way from life in his native China where, because of ancient family rivalries, Carl found himself constantly needing to use his hands to defend himself. Raising a family in the U.S., Carl chuckled when his kids asked him to show them his kung fu moves. Carl tried to explain that his Buggy Bubbles car wash was the means by which he sought 功夫 (gōngfu or “kung fu”), which is translated literally as *human achievement*.

As satisfied as Carl was with his vocation, it shouldn't be surprising that he reacted coolly when a young man named Larry Lawrence approached him about buying out Buggy Bubbles.

“Why do you want to hold on to this old car wash, Mr. Chen?” Larry asked. “I'm offering you a solid million. That's 10% over market.”

“What do *you* want with an old car wash, Mr. Lawrence?” Carl asked.

“I'm just really into the idea of running a car wash,” Larry responded. Then, after thinking a moment, he continued, “You see, Mr. Chen, I inherited the family farm last year when my parents died. I regret that I



FIG. 1: The Buggy Bubbles Car Wash at night.

never learned to farm like my father. But I feel I can live up to his example by running my own business. So I've sold the family farm, and it's my dream to invest the proceeds into a business I can run. I have always had a fascination with car washes since I was a young child."

"Go on," Carl invited.

Larry explained that he had graduated with honors from a masters program in business administration. His award-winning thesis, he explained, was all about applying six-sigma techniques to car-wash management.

"But why do you want to buy *this* car wash, Mr. Lawrence?"

"Do you mind if I take a seat, Mr. Chen?" asked Larry. Sitting down on a small stool next to case of Turtle Wax, Larry began weaving a long tale about how, many years ago, at this particular car wash, he had met the love of his life. "And I brought her back to this very spot, when I asked her to marry me." Larry gestured to a curb upon which sat a giant steel drum converted into a trash bin.

After being left with Larry's card, Carl considered the proposal. When he received a follow up letter with Larry's résumé, he called up the listed references: Victoria Vaden and Wally Wainborough. Both identified themselves as professors at the business school, and

they raved about Carl's character and ability. The next day, Carl called Larry on the phone.



"Mr. Lawrence, I have no desire to sell. But if you love this little car wash, as you say, I will allow you to manage it for a period of two weeks while I travel back to China to introduce my children to their grandparents. I have long wished to be able to do this. You have convinced me that you are competent and honorable. You will learn a lot about the car wash business this way. The experience will aid you in your endeavor to eventually become a car-wash owner, and it will allow you to work at this particular place where you have a strong attachment. While I am gone, we will split the profits 50/50. When I return, assuming you have done a good job, I will help you search for and purchase a car wash of your own."

FIG. 2: A cardboard cut-out of the late movie star and Chinese martial arts master, Bruce Lee, on display inside the walk-in store area of Buggy Bubbles. Carl Chen added the text to promote his buy-10-get-one-free deal.

Larry enthusiastically accepted. As he put down the phone, he looked over at Wally and Victoria. "Well, we'll get the car wash. It's just going to take a

couple more weeks. Bottom line, we will get the land, and we'll be able to consolidate it with our other holdings so that we can sell it to Octan Petroleum for their new refinery project." His eyes lit up devilishly. "We'll make hundreds of millions!"

The three conspirators laughed uproariously.

AS SOON AS CARL WAS ON A PLANE OVER THE PACIFIC, Larry, Wally, and Victoria began working their plan to undermine Buggy Bubbles as a business, so that Carl would be forced to sell. The first customer that came under their care was David Dziwiski. As his just-purchased Ford Focus went through the wash tunnel, Victoria squatted underneath the overhead rotary brush and hit the car with a ball-peen hammer, making a series of dents in the driver-side front fender and rear door – damage that would require hundreds of dollars in repairs. The next car through the tunnel was Erika Edejer's 1973 Ghia Giacinto coupe, a very rare classic with an un-repairable polyfiber composite body. Erika, a car enthusiast of limited means, had paid \$71,000 for the car – nearly every dime she had. With a horrible cracking sound, Victoria did the same to the Ghia as she had to the Ford: Whack-whack-whack. A line of fractured craters was left along the entire left side of the car, instantly reducing the car's value to a tiny fraction of its former worth. As pink, yellow, green, and blue swirls of foam rode the film of water around her feet to the drain, Victoria allowed herself a satisfied smile.

When the Ford Focus emerged from the tunnel, David saw the dents and freaked out. He started yelling loudly and stomping. When Erika saw her Ghia come out of the tunnel, she didn't react at all. Or at least she didn't seem to at first. On closer examination, however, it was clear that Erika had gone into a catatonic state. Unresponsive to anyone, Erika ended up needing to be transported to a mental-health facility where she was kept for a week.

As Larry, Victoria, and Wally learned more about how the equipment worked, they learned new ways to undermine and selectively disable it. Soon, cars were not only coming out damaged, but they were actually emerging more filthy than before. As customers came to Larry with furious complaints, Larry explained that Carl Chen was in charge, and all decisions about equipment settings and foregone maintenance were Carl's. Some damage to cars was, Larry said, considered acceptable in Carl's business judgment.

WHEN CARL GOT BACK FROM CHINA, Larry was there to greet him at the airport. Larry explained that the Buggy Bubbles experience allowed him to realize that the car-wash business was not for him. He gave his keys back to Carl right there and thanked him for the opportunity. When Carl got back to Buggy Bubbles, he could tell something was wrong in the first 10 minutes. There were no customers. In fact, no more than three customers showed up the whole day, and one of those, Zack Zendrich, only came by to purchase a pineapple-shaped hangtag air freshener.

Carl asked those few customers what had happened, and he found out that after a long string of badly damaged cars, people had stopped coming to Buggy Bubbles. Carl tried to call Larry to confront him, but no one answered. Carl then tried to contact the résumé references – Victoria Vaden and Wally Wainborough. But Carl found out that the business school employed no one by those names. Even more astounding, Carl found out that no student named Larry Lawrence had never attended the school.

The next morning, Carl sent internet coupons for free car washes to residents several towns away – customers that, Carl hoped, had not heard the scuttlebutt. Finally, customers started coming in – albeit only for the free washes. Later that morning, as Carl worked humbly to connect with and impress every person coming in, a man in an expensive suit walked up. It was Wally, who Carl had not previously met.

Identifying himself as Wade Wembrow, a friend of the registrar at the business school, Wally said he had heard about Carl's predicament. Understanding that Carl would now be facing financial ruin, Wally offered to buy the car wash from Carl for \$400,000, and then hire Carl to manage it. Wally apologized that he could not offer more, but the business no longer had any going-concern value. He urged Carl to accept the arrangement so that Carl could remain financially solvent.

Not only did Carl rebuff the offer, but as his eyes flared with anger, Carl accused the man of being part of a conspiracy to deprive him of his business. Carl angrily demanded that Wally leave the premises. When Wally refused to exit, Carl put his hands flat against the man's chest and physically pushed him, gently but firmly, toward the door.

"Oh no, old man. I'm not leaving. You are. But not until you sign these papers." An evil smile curled into the corners of Wally's mouth. "Larry? Victoria? Come on out! Carl is not listening to reason!"

Larry and Victoria walked around the corner, Victoria wielding two ball-peen hammers and Larry twirling a pair of nunchuks.

"You're going to sign these papers giving the car wash over to us. And you're going to do it now," Wally said.

"Or else you are going to die," Victoria added with a grin.

Wally threw a swift punch at Carl's face, but with fast-as-lightning reflexes, Carl ducked, bobbed, and spun out his left leg, cutting Wally's legs out from under him. Larry then advanced with nunchuks, but Carl fended off the attack with a large display of pine-tree shaped air fresheners, wrapped Larry up in a large chamois, and disabled him with a head-butt. Victoria then took her shot, hurling a ball-peen hammer at Carl's crotch, which Carl avoided by leaping into a split and wedging himself between the ATM machine and the counter. Victoria hurled her other ball-peen hammer at Carl's head, but with expert timing, Carl caught the tool inches from his face. In one motion, Carl used the hammer as a hook to grab the top of an open door and propelled his feet up onto the clear-cased beverage refrigerators, which he then seemed to race across with his torso virtually perpendicular to the floor. The move allowed Carl to escape Wally, Larry, and Victoria as they regrouped.

As Carl ran outside, the villainous trio whipped out handguns and started firing. Racing to escape the hail of bullets, Carl fled into the exit-side of the car wash tunnel and scrambled over the hood and roof of two cars owned by Hannah Husted - a Honda sedan and a Honda minivan. Ducking and weaving to avoid the swiveling nozzles of the blow drying system, and wiggling sideways to maneuver past the wildly swaying mitter curtains, Carl tried to be careful of the cars, but his footsteps caused minor denting to both of the Hondas. To avoid being pushed back outside where his tormentors were waiting for him, Carl scrambled off the roof of the minivan and landed on the hood of black Chevrolet suburban. There, he was surprised to come face to face with NINJAs.

No, not ninjas. *NINJAs*. In Nevizona, *NINJAs* are law-enforcement officers from state, county, and municipal police agencies cooperating in the form of a drug-enforcement task



FIG. 3: A close-up of the rotating rocker-panel brushes.

force: The Narcotics Investigations of Nevizona Joint-operations Agents. Under Nevizona Compiled Statutes § 44-5308, all participating governments, governmental units, and NINJA agents are immune from civil liability for all actions undertaken in the course of duty.

Sensing no personal or public threat, and acting in utter violation of the United States Constitution, the NINJAs poured out of their Suburban in their uniform black jumpsuits with prominent gold badges. Using a variety of mixed-martial-arts techniques, they all attacked Carl at once. Pivoting to avoid punches, Carl tried to avoid their clutches, but he soon found himself overwhelmed. The NINJAs pushed Carl's face into a swirling rocker-panel brush and then moved his head into the pre-soaker water jets. The NINJAs then left Carl huddled on the floor as they began looking to see if there was any closed-circuit television footage in need of erasing.

Larry, Victoria, and Wally found Carl slumped in the puddles of rainbow foam. There, they made him sign documents selling Buggy Bubbles for \$100,000.

IN THE ENSUING WEEKS, Larry, Victoria, and Wally, consolidated the three-acre Buggy Bubbles land with their other 97 acres and sold the resulting parcel to Octan Petroleum for \$1 billion. Meanwhile, things got even worse for Carl. He was hit with a lawsuit by Zack Zendrich - the customer who bought the pineapple-shaped hangtag air freshener. Mr. Zendrich had an ultra-rare hypersensitivity to the fragrance in the air freshener, which caused his lungs to seize up with a severe asthma attack.

Carl seems to have only one hope left to get back to his sense of gaining *kung fu* through the car-wash business: The law.

He needs a lawyer. That's you.



FIG. 4: Octan needs more refining capacity. Shown here is a portion of the company's Northern Nevizona facility, which is what the Buggy Bubbles site should look like after project completion.

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 claims of David Dziwiski, if any.

Subpart 2: Analyze the claims of Erika Edejer, if any.

Subpart 3: Analyze the claims of Carl Chen based on the intentional tort liability, if any, of Larry Lawrence, Victoria Vaden, and Wally Wainborough. And analyze, if any, the intentional tort claims of any of those three against Carl. Note: This is the appropriate subpart for any discussion of lineal personal torts arising from physical acts.

Subpart 4: Analyze the claims of Carl Chen based on any other tort liability, if any, of Larry Lawrence, Victoria Vaden, and Wally Wainborough. And analyze, if any, other claims of any of those three against Carl. Note: This is the appropriate subpart for any discussion of liability for oblique torts, such as those concerning business, reputational, economic, or privacy interests.

Subpart 5: Analyze the claims of Carl Chen against the NINJAs, if any.

Subpart 6: Analyze the claims of Zack Zendrich, if any.

Subpart 7: Analyze the claims of Hannah Hustead, if any.

If there is anything else you wish to discuss, put it under *Subpart 8*.

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

- 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 certain subparts to be answered with extreme brevity, while other subparts 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 negligence or other concepts covered primarily in Torts I. And don't analyze these facts with contract, property, or criminal law!

Suggested Abbreviations for Your Answer:

AA	Ashton Aldrich	GG	Ghia Giacinto
BB	Buggy Bubbles Car Wash	HH	Hannah Hustead, owner of the Hondas
CC	Carl Chen	LL	Larry Lawrence
DD	David Dziwiski	VV	Victoria Vaden
EE	Erika Edejer	WW	Wally Wainborough / Wade Wembrow
FF	Ford Focus	ZZ	Zack Zendrich

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