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EXAM ID
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UNIVERSITY OF NORTH DAKOTA SCHOOL OF LAW

Torts II
Spring 2017

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ESSAY
ISSUE
SPOTTER

FINAL EXAMINATION - ESSAY

Open-book.
30 minutes reading/outlining
45 minutes writing

Write your exam number in the box in the upper-left corner!

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. You may not waive anonymity. Use only your exam ID number on your response. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.
3. Do not turn the page until instructed to begin.
4. Assume that today's date is the regularly scheduled date for the exam administration.
5. 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.
6. 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.
7. 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.
8. 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.
9. Base your exam responses 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.

SPECIFICS FOR THIS ESSAY PORTION:

10. You have a total of 1 hour 15 minutes.
11. 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), to 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.

12. 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 was allowed during the RO Period (e.g., refer back to the exam booklet, reference your books and notes — including any notes you created during the RO Period).

13. This portion of the examination is "open book." 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.

14. As this exam will be graded anonymously, do not write your name on any part of the exam response or identify yourself in any way, other than to use your exam ID number appropriately.

15. Organization counts. 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. 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.

17. 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.

18. Clarity counts. Feel free to use abbreviations, but only if the meaning is entirely clear. 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. Computers: Please clearly label each question separately in your answer.

19. Good luck!

Fatal Death

THE FLOOR WAS SPRINGY under Colin Corran's feet, the plywood boards flexing and creaking with his every step. The offices preserved that thrown-together feel of a temporary army building from World War II. Weirdly, this sort of architecture was a movie-industry banner of prestige. When Colin reached the end of the hallway he felt a zing of elation as he saw the name on the door: Martha McQuarrie, President of Motion Pictures, Enormo Entertainment. An assistant turned the knob and let him in.

McQuarrie sat impassively behind an exquisite antique desk. In the corner, a potted ficus was elevated atop a water-stained pile of passed-over scripts. The open windows let in the burbling of a nearby fountain and the clatter of grips moving lighting dollies somewhere beyond. McQuarrie pursed her lips and raised an eyebrow: "Well?"

Corran drew a breath, set his feet in a jujitsu stance, fixed McQuarrie in a stare, and thrust his hand out like he was going to force-choke the ficus. His pitch was just seven words. He spoke them distinctly:

"Fatal Death: Murder's never been so deadly."

He stayed motionless and waited for the reaction. A minute passed. He wondered awkwardly when he should put his hand down.

"Okay, Mr. Corran," McQuarrie said finally. "I'm interested. Have a seat. Give me the long version."

"It's based on the story of Terry Torkdrasson — a real guy — who taught science at a private high school in a small town. He attempted to teach his students about pollution-induced acid rain by setting up a huge experiment on the roof of the school. He created clouds of volatile chemicals and used large fans to blow them together so that the chemical reactions would happen in the air over the parking lot. Unfortunately, when he tried this, someone jostled a table, causing a bottle of reagent to fall and shatter in front of one of the fans. This put far too much reactant into the air, causing the production of much more acid at a much greater strength than Terry had intended. Then, an unexpected gust of wind moved the cloud so that it engulfed Stacie Sholectah, a former



FIG. 1: Gate to the Enormo Entertainment studio lot.

science teacher and friend of Terry's who'd come to watch. The acid burned her all over her body, and after several excruciatingly painful days in the hospital, she died. She had no family except an estranged father who had refused to have anything to do with her for the last 10 years of her life. She willed her entire estate to Patrice Plommer, her neighbor."

"Wow, that is really grim," McQuarrie said. "I've never heard of this. Was it covered by the media?"

"No," Corran said, "Terry Torkdrasson was a nobody, and he's stayed completely obscure. Immediately after the accident, he resigned from the school. He now works as a private tutor. I only know the story because my cousin is the Spanish teacher at the high school." Corran then pulled out a sheaf of papers three-hole-punched and bound with brass brads. "I've written a complete script. I've changed Terry Torkdrasson's name to Terry Thornsen and Stacie Sholectah's name to Stacy Scholls. The facts in the script are the same as in real life, except that in the script," Colin raised his eyebrows meaningfully, "Terry's actions are a diabolical scheme to murder Stacy. In reality, Terry never meant to kill or hurt anyone. He was incredibly cautious in setting up his experiment. But bringing murder into it makes it movie-worthy. Compelling and dramatic. And at any rate, the only people who would recognize Terry from the character in the movie are the people in the small town where this happened, where Terry still lives. I see us opening the movie with a screen that says 'BASED ON A TRUE STORY.' The authenticity fuels the drama. In fact, I think there's Oscar¹ potential here."

"Hmmm," McQuarrie said. "I actually see this as a comedy, not a drama. I think we could use this as a vehicle for a great comic acting duo, with just a few changes." McQuarrie's brow then furrowed as she scanned the ceiling, apparently spotting a whole constellation of creative ideas there. "I say we change the names to Billy and Jenny. And we make it over-the-top funny. I can see the trailer now: The announcer says in a menacing baritone, 'Fatal Death, murder's never been so deadly,' and then we cut to Billy saying, 'I'm going to kill you! And then, I'm going to KEEP ON KILLING YOU!' This is gold – I love it! And the movie will have a happy ending. It'll be an attempted murder, but we'll make it endearing with a line of dialog and then Billy and Jenny will open a gourmet cupcake bakery and live happily ever after. Fantastic! I'll call your agent. I think we have a deal."

Colin Corran left the meeting with an odd mixture of euphoria and bewilderment. His first 'successful' pitch looked like it might result in a movie very different from the one he'd envisioned. But it didn't matter, he told himself. Once he'd sold his first screenplay, it'd be a lot easier to sell the next one. And he already knew what that was going to be. He had the pitch down to just eight words: *Risky Danger: Hazards have never been so hazardous.*

¹ An "Oscar" is the most prestigious award in film. It is given by the Academy of Motion Picture Arts and Sciences.

QUESTIONS

Provide analysis for the following:

1. **Would there be good claims against Terry Torkdrasson related to the acid experiment?** Discuss any claim or claims against Terry Torkdrasson based on what happened to Stacy Sholectah. Do not discuss punitive damages or any issues of vicarious liability or liability of anyone other than Terry Torkdrasson. Don't speculate on statute of limitations issues. And don't discuss claims for negligence or dwell on material from Torts I.
2. **Would *Fatal Death*, as envisioned by Colin Corran, give rise to defamation liability?** Discuss issues of defamation liability for the movie if it is made in the way Colin Corran envisions. Do not discuss causes of action other than defamation.
3. **What difference does Martha McQuarrie's vision make?** Discuss any difference it would make in your answer to question no. 2 if the movie were made with the changes Martha McQuarrie envisions. Again, do not discuss causes of action other than defamation.

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 the questions are not separately weighted; instead, they will be lumped together for assessment. So divide your time among the questions according to what requires the most discussion and analysis. Plan ahead to put information where it belongs.

Some suggested abbreviations for your answer:

Colin Corran	CC
Enormo Entertainment	EE
Fatal Death	FD
Martha McQuarrie	MM
Patrice Plommer	PP
Stacie Sholectah	SS
Terry Torkdrasson	TT

NOTES: *These notes are not part of the hypothetical facts of the exam.* This exam, including photo and alterations by Eric E. Johnson. © 2017 Eric E Johnson. Konomark - Most rights sharable. E-mail me to request gratis permission for re-use. ericejohnson.com

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