
FINAL EXAMINATION

Limited open-book. Three 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

1. Assume that today's date is May 6, 2009.
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 Torts II course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
4. Do not dwell on prima facie negligence or other concepts from Torts I.
5. 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.
6. 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.
7. 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.
8. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
9. Organization counts.
10. Read all exam question subparts before answering any of them – that way you can be sure to put all of your material in the right place.
11. Feel free to use abbreviations, but only if the meaning is entirely clear.
12. **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 subpart.
13. **Computers:** Please clearly label each subpart of your answer.
14. 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 Torts Wypadki, which will be distributed to you in the exam session, and (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. You may not consult or access any other piece of paper, including, but not limited to, a copy of the Torts Wypadki that you have printed out yourself. No materials may be shared during the exam.
15. 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.
16. Good luck!

“Buckaroo Gulch”

SINCE 1951, TOURISTS HAVE BEEN COMING TO Buckaroo Gulch for wild west fun. Admission to the replica frontier town is free. But the various attractions require tickets. There are lots of great things to do, including burro rides, a horse-drawn stagecoach, and a miniaturized train that winds through a landscape of rusting mining equipment and old wagon wheels. A highlight is the gunfight re-enactment in the Gunfight Corral theatre. There are three showings each day, four on Saturdays and Sundays. There is also a chuck wagon restaurant and a gift shop. Edna and Carl Everstan, the owners of Buckaroo Gulch, would want me to be sure to tell you that the entire town can be rented out for weddings and corporate events.

Edna and Carl do okay. They aren't dependent on Social Security. But they aren't exactly turning their noses up at Medicare Part D coverage either. Buckaroo Gulch has always been more about fulfilling a dream than making a fortune. Edna and Carl built the park as newlyweds after Carl finished attending college on the G.I. Bill. Back then, the property was out in the middle of the Nevizona desert. Since then, however, suburban sprawl has overtaken the area.

Not all of Buckaroo Gulch's neighbors appreciate the mom-and-pop theme park in their midst. In February 2009, during a fierce thunderstorm, lightning felled a tree and collapsed some of the fencing at Buckaroo Gulch. Several longhorn steers escaped and stampeded through the new car lot at neighboring Desert Chevrolet. A line of five new Chevy Cobalts received minor scratches. There was moderate damage to a 2009 Chevy Silverado 1500 pick-up truck - scratches, a few dents, and a broken sideview mirror. But the real disaster was what happened to a brand-new ZR1 Corvette, whose bright red color seemed to enrage the longhorns. The Corvette endured so much damage it was undriveable. Edna and Carl came over to the showroom the next day and offered to purchase the Silverado, scratches and all, as a neighborly peace offering. Tex Tallow, the dealership's owner, rebuffed them. He demanded instead that Edna and Carl pay the full sticker price for both the truck, at \$23,678, and the Corvette, at \$115,670. Upon hearing this, Carl said nothing. Instead, he worked up something from the back of his throat and spat on the showroom floor between Tex's feet. He and Edna then turned and walked out.

Tex's son, Jesse Tallow, had been watching the altercation from the balcony. Jesse, having recently graduated from college, had never had a job. But as heir apparent to the Tallow dealership empire, he was eager to prove himself to his father.

“Dad, we can't let them get away with this,” Jesse said. “We've got to show them that the Tallow brand is not to be trifled with.”

“I agree, son. What do you have in mind?” Tex asked.

Jesse then outlined his plan to infiltrate Buckaroo Gulch to wreak havoc from within. Tex was impressed. Tex had always thought Jesse had too much of his mother in him. But maybe the boy took after his father more than he'd given him credit for.

IN THE ENSUING WEEKS, THINGS WENT DOWNHILL for Edna and Carl. Several of their longhorn steers dropped dead from some kind of disease, and Edna and Carl both got very sick. With all the news about bovine flu, the physician was particularly worried about the contemporaneous cattle deaths. She insisted on sending blood samples from

Welcome to Buckaroo Gulch!

Buckaroo Gulch is a family-oriented theme park designed to immerse you in an Old West experience. By entering Buckaroo Gulch, you consent to be subjected to the rough-and-tumble world of the Old West, and you agree to play along with all the family fun! In particular, you consent to be photographed, to be subjected to insult, to be told tall tales, and to be "arrested" and "jailed." You also agree to assume the risk of your visit and to waive all claims for, and covenant not to sue on the basis of, any and all claims for ordinary or gross negligence, and you agree to indemnify and hold harmless Buckaroo Gulch Corporation, and its management, staff, and shareholders with regard to any action arising from events occurring in relation to your visit to Buckaroo Gulch!

Now, have fun, y'all!

FIG. 1: The sign at the entrance to Buckaroo Gulch, reproduced at 1:2 scale.

Edna and Carl to the Centers for Disease Control for testing. The one bright spot for Edna and Carl during this period was that they were able to hire a fantastic new stunt performer, Jesse Jaspers, who had a long and impressive résumé of stunt work and theatrical management jobs.

YESTERDAY, SIX-YEAR-OLD BILLY FRANDSEN WAS JUMPING UP AND DOWN with excitement as his family locked their rental car and walked through the dusty parking lot to the entrance of Buckaroo Gulch. Billy's dad, Dave, his mom, Millie, and his baby sister, Sally, were all smiles when a Buckaroo Gulch photographer, Petey Porter, popped up and snapped a group shot. But as the photographer continued to shoot pictures of the family, Dave became a little grumpy and told the photographer to move along.

The Frandsens did the burro rides, the sharpshooter gallery, and the stagecoach. They were headed into the saloon for some sarsaparilla when Billy started pointing and shouting.

"Look everyone! Dad's on that poster!"

Sure enough, Dave's grumpy face, photographed earlier that morning, was on a poster that read "WANTED! for Robbery, Extortion & Murder."

"That's pretty funny," Dave said, lifting Sally out of her stroller so she could see.

"Dada!" Sally exclaimed with delight upon seeing the picture.

Dave put Sally down on the dusty wooden porch of the saloon so she could toddle in herself. That's when Buckaroo Gulch cast members Louie Lamar and Kevin Keflavik grabbed Dave from behind and tried to handcuff him. Dave whirled around and punched Kevin in the jaw.

Collecting his wits, Dave said, "I'm not in the mood for a pretend arrest."

"Mr. Frandsen, this is not a pretend arrest," Louie said, flashing a phony, but very real looking, Saguaro County Sheriff's badge.

"Are you serious?" said Dave.

"Absolutely," said Kevin. "And you are in a lot of trouble for hitting me, mister. You have the right to remain silent ..."



FIG. 2: The poster depicting Dave Frandsen. On the day of the Frandsens' visit, copies of the poster were put up around the park and on the Buckaroo Gulch website.

After Dave was Mirandized, he was led away to the Buckaroo Gulch jail.

Meanwhile, Millie went to the Buckaroo Gulch management office to ask about her husband's arrest.

"Oh, no, it's not for real," Edna said. "We only do it for fun. If your husband wants to leave jail, all he has to do is pull down on the lever on the back side of the jail-cell door where the lock is. It will pop right open."

When Mille, Sally, and Billy got over to the town jail, Dave was still there, clearly under the impression that the cell required a key to be opened. When Millie pointed out the release latch on the jail-cell door, Dave felt stupid for not having seen it earlier. He then pulled down on the latch, and the cell door sprang open.

"This place is really getting on my nerves," Dave said to Millie. "Let's head out."

"Nooooooooo! I don't want to leave!" screamed Billy.

"Alright, I tell you boys what," said Millie. "We'll stick around to see the gunfight, which we haven't seen and which is supposed to be their big thing, and then, after that, we'll go back to the hotel room."

"Fine," said Dave with a subtle roll of his eyes.

"Fine," said Billy, stamping his foot on the ground.

"Iyn!" announced Sally.

So the family walked over to the Gunfight Corral, gave their tickets to the kid at the turnstile, parked their stroller at the base of the aluminum bleachers, and climbed the risers to get a seat.

Carl and Edna came out with microphones in their hands. "Today's gunfighting show is a special one," said Carl. "It is our great pleasure to introduce to you the newest member of the Buckaroo Gulch family, Jesse Jaspers, who will play the part of one of the outlaws. Everyone give Jesse a great big Buckaroo Gulch welcome!"

The crowd applauded. With a beard, dental appliance, and colored contact lenses, no one would have guessed it was Jesse Tallow. And since the Everstans never caught on during the hiring process, Jesse felt sure no one else would either.

"Now, everyone please remain seated throughout the performance. You don't want to get in the way of the dangerous stunts you are about to see. Enjoy the show!"

Jesse had planned carefully how to sabotage the show. His chosen moment was a scene where he and three other stunt performers were gunning down the town clerk. Instead of blanks, Jesse had loaded his gun with real bullets. His plan was to shoot up the strollers at the foot of the bleachers, which he was confident would cause enough fear among parents to do serious damage to Buckaroo Gulch's reputation.

When the moment came, as he and the two other bad guys took down the clerk in a barrage of gunfire noise, Jesse discharged his weapon into the bank of strollers. Several strollers fell over into the dust. With satisfaction, Jesse noticed that baby formula was leaching out of one of the diaper bags and pooling on the ground.

People in the crowd started screaming. The reaction was actually much greater than Jesse had hoped for. Then Jesse turned around and saw what the crowd was reacting to. It had nothing to do with the strollers. It was Stan Starwood, one of the stunt performers. Clutching his blood-soaked chest, Stan staggered and then fell backward.

Several audience members stood up and cheered. It was the most realistic shooting scene anyone had ever seen.

Only Jesse immediately understood what had happened. One of his bullets had ricocheted off a stroller and hit Stan in the chest. It was a one-in-a-million shot. Truth be told, the ricochet never would have happened if Dave hadn't modified Sally's stroller by welding a steel plate to the frame to enable it to carry his golf clubs. But long odds or not, Stan was clearly dead.

Realizing he was in big trouble, Jesse knew he had a chance to escape. Since he had falsified his employment application with Buckaroo Gulch, and since he was already wearing a disguise, his identity was shielded. All he had to do was get away. He ran for the exit, stage left. But he was stopped by a sight he was could not have imagined. Dozens of people in biohazard suits were blocking the way.

"Halt! Everyone stay where you are," came a muffled voice amplified through a loudspeaker. The crowd gasped at the surreal sight of men and women wearing full-body biohazard suits walking out of the swinging doors of a replica dry goods store and around the corners of the various building facades.

"This area is now placed under quarantine by the authority of the federal government," said one of the figures through a bullhorn. We have reason to believe that this area is infected with a human-communicable strain of bovine flu."

With that announcement, nearly everyone in the stands panicked and started a mad dash for the exits. Little Billy Frandsen was trampled and suffered a broken leg. When Dave Frandsen ran to try to help his son, one of the biohazard-suited feds put out a foot and tripped him. Within minutes, everyone in Buckaroo Gulch had been herded into the center of town.

Soon after everyone was corralled, one of the quarantiners raised a bullhorn and announced, "Sorry for the inconvenience, ladies and gentlemen. There seems to have been some sort of a mix up. You are all free to go."

And with that, all the biohazard-suited people jumped into black Chevy Suburbans and drove off.

Dave carried his son out of Buckaroo Gulch, and Millie pushed the stroller. Bumping over the dirt parking lot to get to their rental car, the stroller suddenly collapsed, breaking Sally's arm. Apparently the catch for locking the stroller in the



A CDC official at Buckaroo Gulch yesterday. Stan Starwood's body lies in the street, lower left.

Wild, Wild Day at Wild West Theme Park

By JED JARNKINS, CNCJ Staff Writer

TABLE MESA, NEVIZONA – Visitors to Buckaroo Gulch, a wild-west-themed amusement park in central Nevizona, got more of a show than they bargained for on Tuesday when, in apparently unrelated incidents, a phony theatrical gunfight turned deadly and biohazard-suited federal officials temporarily seized control of the park in a scare over a deadly strain of bovine flu.

The shooting left dead 39-year-old Stan Starwood, a former Hollywood film star. Starwood, who had once earned several million dollars per picture, had left Hollywood years ago after a string of box-office flops. In recent years he was working as a stuntman in the gunfight show at Buckaroo Gulch.

The show ordinarily uses blanks, not real bullets, according to a Buckaroo Gulch spokesperson. Police had no immediate explanation for how Starwood ended up shot with a real bullet. Emergency responders said that Starwood died of a gunshot wound to the chest before

emergency crews arrived.

Shortly after the shooting, a crew from the federal Centers for Disease Control arrived in blue biohazard suits to quarantine Buckaroo Gulch after botched laboratory tests indicated, falsely, as it turned out, that cattle at the amusement park had died from a strain of a human-communicable bovine flu.

The mistake was not revealed until after CDC officials had already quarantined everyone in the amusement park for several minutes.

Meanwhile, movie fans the world over are mourning Starwood's death. Though long retired from the Hollywood limelight, Starwood had recently come back into the news when his new wife, Rhea Renoir, appeared on a daytime talk show to reveal that she found Starwood irritating and unattractive, and that she was planning to seek a divorce.

Police declined to name any suspects in the shooting death of Starwood, saying only that the matter is under active investigation.

Starwood had no children. Starwood's only family, his brother Stu, also a renowned actor, died in 2005.

FIG. 3: Newspaper article from this morning's paper.

unfolded position had been jarred loose by the rough terrain. Dave and Millie spent the next 10 hours in the emergency room getting their kids treated.

“Worse family vacation ever,” Dave said. Millie just closed her eyes and rested her head on her husband’s shoulder. At least it was over.

THAT NIGHT, Dave’s high school English teacher, Mrs. Marn, who had retired to Nevizona, was surfing the web looking for news of the real-life shooting and CDC snafu at Buckaroo Gulch. She saw the wanted poster (shown in Fig. 2) on the Buckaroo Gulch website and recognized Dave.

“I always knew that Davy Frandsen boy would get into trouble with the law,” she said to herself.

QUESTION

Analyze the parties’ claims and liabilities.

Please organize your reponse as follows, clearly labeling the subparts:

Subpart A: Discuss the liability, if any, colorably owed by any of Edna Everstan, Carl Everstan, Buckaroo Gulch, and any employees of any of the foregoing, except Jesse Tallow.

Subpart B: Discuss the liability, if any, colorably owed by any of Tex Tallow, Jesse Tallow, and Desert Chevrolet.

Subpart C: Discuss the liability, if any, colorably owed by any of the federal government and federal employees or agents, including the CDC and CDC staff.

Subpart D: Discuss the liability, if any, colorably owed by any other party, but do not repeat analysis you have already provided under subparts A through C.

Keep in mind the subject matter of the Torts II course. Do not dwell on prima facie negligence or other concepts primarily covered in Torts I.

Do not repeat the exact same analysis with substituted parties. Instead, if called for, it is appropriate to incorporate analysis by reference to another part of your exam answer.

Note that the subparts will not all be given equal weight. The subpart structure is provided for organizational purposes only. Thus, 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.

NOTE: This exam (obviously) is not based on real events, real people, or real operating practices of any theme park.

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