
FINAL EXAMINATION

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

1. Assume that today's date is December 5, 2011.
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 I 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 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.
6. 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, plus any hypothetical laws presented in the facts. 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.
7. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
8. Organization counts.
9. 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.
10. Feel free to use abbreviations, but only if the meaning is entirely clear.
11. **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.
12. **Computers:** Please clearly label each subpart of your answer.
13. 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, (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 Torts Wypadki that you have printed out yourself. No materials may be shared during the exam.
14. 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 I.D. number appropriately. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.
15. Good luck!

Disaster Prom



FIG. 1: Exterior of Heavell School District's Heavell High School.

TO BE FAIR, much of the blame lay with Heavell High School's Student Council. Let's face it, high school student government is a more-or-less vacuous exercise in pretend democracy. Aside from participating in some simulacrum of an election, student government has pretty much only one job: Pick a prom theme.

You would think picking a prom theme would be pretty easy. But as the Heavell High Student Council proved, it can be screwed up in legendary fashion.

While steadfastly adhering to Robert's Rules of Order and staying within the strict letter of an 86-page Constitution and Bylaws document, the Heavell High Student Council approved and then disapproved of no less than 12 prom themes in the course of four months, including: *Enchantment Under the Sea*, *Roaring 20s*, *Jungle Allure*, and *Deep Blue Destiny*. Some of them really were bad – like *Memories of Tomorrow*. Others, like *Garden of Lights*, would have been just fine. But this was a Student Council addicted to meetings and procedural wrangling. Inevitably, Mrs. Maranth's journalism class produced a three-page investigative exposé for the school newspaper. And as soon as the *Heavell Herald* hit the linoleum hallways, the recriminations ensued. A grassroots movement soon sprang up to force the whole student government to face a recall election.

Under this intense pressure, Student Council took unusually decisive action: They approved a new theme and simultaneously amended their constitution to prevent themselves from changing their minds again.

Their theme to end all themes was: *Tonight is the Night*.

Unfortunately, this theme horrified the school's parents group, who thought – mostly accurately – that the words were a not-so-veiled reference to breaking the Teenage Abstinence Pledge the entire senior class had taken at the most recent school-wide assembly.

The ensuing school board meeting resulted in a veto of the theme, and the issue was sent back to HHS. The subsequent 16-hour Student Council meeting ended at 7:00 a.m. with a 4-3 vote approving the theme *Forever Tonight*.

The chief advantage of *Forever Tonight* as a theme was that it wasn't all that far off of *Tonight is the Night*, so, in the view of the politicians on Student Council, their electorate was less likely to see them as waffling. But more importantly, *Forever Tonight* was barely a theme at all, and thus would work with any décor. This was a necessity, because every time the Student Council had approved a theme, they also had made an appropriation and a purchase request. Thus, Heavell High was left with a weird mélange of non-matching ornamentation. There were mylar cloud balloons, animatronic tigers, inflatable arches, and half a dozen clashing floor-to-ceiling gossamer fabric accents. And then there were the lights – enough halogens, LEDs, incandescents, strobes, gels, gobos, and string lights to make a cruise ship visible from deep space.

The staff of Heavell High School set it all up in the gymnasium on prom night and plugged it.

Some would have called it a garish spectacle of tinselly extravagance, but it was all magical elegance to sweethearts Jake Jaspersen and Katy Kellers. Jake and Katy were, respectively, the school's third-string quarterback and co-captain of the cheer squad. As the two most popular people at Heavell High School who hadn't been elected to Student Council, their non-involvement in prom planning made them obvious front-runners for prom king and queen. It seemed like a perfect night. Katy's only worry was her dress.

Katy was wearing what was easily the most expensive prom dress in Heavell High history – a one-of-a-kind creation of überfamous designer Jason Wang that had appeared in the season finale of the television show *The Valley*. She borrowed it from her mother's friend, George Galtinsol, who had obtained it as a gift from the show's producers. The dress could easily have gone for more than \$100,000 at auction. Katy knew that by wearing it to prom it could get damaged, but she was determined to look fabulous. And frankly, she did.

Jake picked up Katy in his 1979 Chevy Camaro and brought her over to his house for pictures. Jake's mom, Nancy Nevinsal, had Katy ascend the spiral staircase to pose. Nancy knew she should have told Katy about the exposed sharp metal nail points at the base of the staircase railing, but she was too busy trying to arrange the perfect photo to make a mention of it. Unfortunately, Katy's dress hooked on to one

Thank you for attending prom!

By entering, you expressly agree to assume all risk associated with prom, which may include, but is not limited to, physical injury, emotional trauma, property damage, and/or death. You hereby release the Heavell School District, and all its employees, agents, officers, directors, contractors, and affiliates from any and all liability stemming from your attendance at and/or participation in prom. Prom can result in serious bodily injury. **NOW HAVE FUN!**

FIG 2. The text on the back of all prom tickets.

of the points, and when Katy started down the staircase, a huge swath of taffeta was ripped off. The mishap instantly destroyed most of the dress's financial value. Katy became distraught.

In order to calm the young girl's nerves, Nancy mixed up a tall and very strong rum drink. She had Katy swig it down. Indeed, once Katy was feeling the effects of the alcohol, she was in a much better mood. Within a few minutes she was all smiles and ready to have the night of her life. Jake then helped Katy, slightly stumbling, into his Camaro. The two were off to prom.

Jake was slightly embarrassed at the entrance to the gym when he realized he hadn't bought his tickets in advance. Luckily, they were on sale at the door, and Jake had cash. He purchased two tickets, each of which looked curiously large and sophisticated for a high school prom, and then Jake offered his arm to Katy. The two walked into the glittery gallimaufry that was *Forever Tonight*.

The first song to come on was a fast-tempoed hip-hop track which immediately inspired Jake to find an unoccupied part of the floor and begin a vigorous set of high-intensity dance moves. Unfortunately, Jake slipped on a patch of axle grease - the same kind used in Heavell's vocational auto-shop program - and Jake fell forward, striking his head on the hardwood floor. No one knew how the grease had gotten there - it was totally inexplicable. Regardless, it was a very hard fall. Some witnesses thought they could actually see stars swimming around Jake's head. (Although, on second thought, those could have been projections from the *Space Odyssey* theme lighting kit.)

Katy picked up two of Jake's incisors from the floor, stuffed them in Jake's breast pocket, and whispered in his ear, "If I was able to carry on after what happened to my dress, you can keep going now."

Jake obligingly tried to shake off the fuzziness that enveloped his head and wobblingly accompanied Katy to the front of the gym for the announcement of prom royalty.

As Jake and Katy clutched hands, Principal Patricia Perezillo took the stage and walked to the mic. Her words were magical: "This year's prom queen is Katy Kellers!"



FIG 3. It was all a blur for Jake after his header on the dance floor.

The crowd applauded and cheered.

On the cusp of announcing the prom king, Principal Perezillo glanced over at Jake and saw his woozy, bloody, gap-toothed smile. Seemingly flustered, Perezillo announced, "And, um, the prom king is, um, Jake Jaspersen!"

As the *Heavell Herald* would later uncover, Chet Chenders had actually received the most votes for prom king. Thus, the title should have gone to him. It would have been a social breakthrough for Chet, who was an interscholastic chess champion, Debate Team co-captain, and regional robotics competition semifinalist. But when Principal Perezillo saw Jake's injury, she made the quick executive decision to give the honor to Jake in the hopes that it might forestall a lawsuit.

Jake took to the stage to with Katy. As the crowns came down on their heads, Principal Perezillo triggered the balloon drop and confetti cannons. Other than the teeth that would need to be photoshopped in later, it was a picture-perfect moment. But only for a moment.

Unfortunately, the confetti cannons blew some of the gossamer fabric from the *This Night's a Dream* theme into the halogen lamps from the *Midnight in Paris* theme, igniting a small fire. Then a floating mylar balloon from the *Heaven on Earth* theme knocked over a foam giant snowflake from the *Fire and Ice* theme, causing the release of a big puff of powdered aluminum glitter. Mixed with the oxygen in the air, the glitter cloud ignited like a bomb. With a *poof, zip, and crackle*, the electricity shorted out, plunging the gym into darkness – only to be reilluminated from the spreading fire. Frank and Francesca from the French Club, who had been basking in the glow of the faux Eiffel Tower, were the last to the exits. They ended up with serious burns.

Jake and Katy made it to the Camaro. Katy asked Jake to drive while she texted around to find out about the after party. Jake could no longer sense any symptoms from the blow to his head, so he felt fine at the steering wheel. But after driving a couple of blocks, Jake suddenly lost consciousness – a late-emerging effect of his fall.

With his foot pressing heavily on the accelerator, the Camaro started to take off wildly down the street. Katy did the only thing she could – she grabbed the steering wheel and tried to pilot the car to safety. But because of her inebriated state – owing to the cocktail Nancy gave her – Katy didn't see motorcycle-rider Mike Mervesh.

Mike, a senior at Heavell High was boycotting prom since it had become, in his judgment, "beyond stupid." He was on his way to the reservoir to hang out with his stoner friends. But he was in the wrong place at the wrong time. The Camaro slammed into Mike full force, throwing him to the pavement.

If Mike had been wearing a helmet, he would have avoided serious injury. But since he was not, his skull was fractured, and he received traumatic brain injuries. Mike was rushed to the closest hospital where he was seen by the attending emergency-room physician, Dr. Donald Dregnan.

With Mike lying on a gurney in Curtain 2, Dr. Dregnan undertook a quick examination. The ordinary standard of care in such a case would be to order a CT scan of the head, but Dr. Dregnan decided to leave the decision for the patient.

"Hello Mr. Mervesh. I am Dr. Donald Dregnan," he said. "You've been in a serious vehicular accident, and you have severe contusions to the head. It's possible that you fractured your skull. But we just don't know. We could order a head CT to have a look, but that's expensive. And it also would subject your brain to possibly unnecessary radiation. Do you want to skip the CT scan?"

Mike, who was in severe pain and had scant understanding of his surroundings, much less the content of what Dr. Dregnan was saying, mumbled "Yes."

"Very well then. I'll get you something for the pain."

What Dr. Dregnan didn't say was that the risk of not having a CT scan was that doctors might miss – as in fact they did – seeing a serious emergent neurological condition requiring immediate surgery. As it turns out, because Mike didn't have the surgery, he suffered permanent brain injury.

The disastrous prom at Heavell High that year made national news. And soon there was a country ballad, a movie, and even a musical about the catastrophe. Never again would the words "Heavell High" bring to mind an award-winning showchoir program or an area-leading assortment of advanced-placement courses. That name will now always be associated with the worst prom of all time, along with the enduring scars felt by the entire community that gave a whole new meaning to *Forever Tonight*.

QUESTION

Analyze the parties' claims and liabilities, clearly labeling the subparts of your answer, as follows:

Subpart A: Discuss the possibilities, if any, for tort recovery in favor of George Galtinsol.

Subpart B: Discuss the possibilities, if any, for tort recovery in favor of Katy Kellers.

Subpart C: Discuss the possibilities, if any, for tort recovery in favor of Jake Jasperson against Heavell School District (as owners and operators of Heavell High School) and its employees.

Subpart D: Discuss the possibilities, if any, for tort recovery in favor of Chet Chenders.

Subpart E: Discuss the possibilities, if any, for tort recovery in favor of Frank and Francesca against Heavell School District (as owners and operators of Heavell High School) and its employees.

Subpart F: Discuss the possibilities, if any, for tort recovery in favor of Frank and Francesca against the Student Council.

Subpart G: Discuss the possibilities, if any, for tort recovery in favor of Mike Mervesh.

Subpart H: If there is anything else you wish to discuss, which does not belong under any of subparts A through G, you may put it under this Subpart H.

Note that the subparts will not all be given equal weight. Divide your time among the subparts according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs. Do not repeat the exact same analysis with substituted parties. Instead, you may, if appropriate, incorporate previously stated analysis by reference.

Suggested abbreviations for your answer:

Doctor Donald Dregnan	DD	Nancy Nevinsal	NN
Frank and Francesca	FF	Principal Patricia Perezillo	PP
George Galtinsol	GG	Heavell High	HH
Jake Jasperson	JJ	Heavell School District	HSD
Katy Kellers	KK	the Student Council	SC
Mike Mervesh	MM		

CREDITS

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