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# Torts I

ESSAY  
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SPOTTER

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## 30/45 FORMAT PRACTICE FINAL ESSAY EXAM

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# Hong Kong by Air and Sea

PRACTICE EXAM

**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.**

### General Notes and Instructions

1. Your goal is to show your mastery of the material presented in this course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
  2. For the purpose of answering questions, unless otherwise directed, assume that today's date is the original, officially scheduled date of the administration of the exam.
  3. Unless directed otherwise, base your answer on the federal law, the general state of the common law, and typical state 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.
  4. You may write anywhere on the examination materials – e.g., for use as scratch paper. But only answers and material recorded in the proper places will be graded.
  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. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
  7. 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 any information about the exam to the same.
- Specific Notes and Instructions for the Essay:**
- a. This part of the exam is administered on an “open-book basis.” 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.
  - b. 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.
  - c. Keep in mind the hypothetical setting for the exam facts, noted in general instructions above. In your written response, 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.
  - d. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
  - e. Organization counts.
  - f. 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.
  - g. Feel free to use abbreviations, if the meaning is clear.
  - h. **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.
  - i. **Computers:** Please clearly label each subpart of your answer.
  - j. All exam materials, including this booklet, must be turned in at the conclusion of the period for taking this portion of the exam.
  - k. Good luck

## Hong Kong by Air and Sea

THE COAST OF CHINA LOOKED LIKE THE FORGES OF HEPHAESTUS. Sam Sagerian had never seen anything like it as he gazed out the starboard window of his aircraft into the dimming light of sunset. A mixture of marine fog and coal smoke obscured a blaze of orange electric light and gas flares that went on to the horizon in all directions. It was Sam's first trip to HK, or even to Greater China. Two of his closest friends from college, were getting married, and Sam was psyched for the party.

With an empty seat beside him, Sam sprawled out. He didn't remember drifting off to sleep, but he awoke to a loud *BONG!* over the PA system and the voice of the pilot saying, "It's been a great joy having you on board Constellation Air flight 81, Hong Kong's friendliest airline. We have clear air all the way in to Hong Kong Chek Lap Kok International Airport, and we are anticipating arriving 20 minutes early. Flight attendants, please prepare the cabin for arrival."

Just as Sam groggily started to sit up, the plane dropped sickeningly. Then it jolted hard upward. Sam heard the overhead compartment above him come open, and he looked up just in time to see a portable oxygen tank drop out and hit him in the face. A valve on the tank opened up a gash in his forehead, and the impact instantly gave him a nasty headache.

A flight attendant came right away. She picked up the oxygen tank and restowed it.

"I can't imagine what happened," the woman said. Her name tag said Wendy Wú. "This is a 'crew only' overhead compartment. The oxygen tank is always locked up so that only authorized crew can get it loose. Must be a very unlucky coincidence. I'm very sorry this happened to you."

"Um, do you have a first aid kit with some bandages?" Sam asked. "How bad is this cut? It seems to be bleeding a whole lot."

"Yes," she smiled, "You're bleeding a lot. But no, I'm sorry, we don't have a first aid kit for you. They used to stock one up here with the oxygen bottle. But not any more." She leaned in and said in a low, conspiratorial voice, "Every other airline carries one or more first aid kits in the passenger cabin. It's standard practice. But not on Constellation Air. To be completely honest, there is a first aid kit in the cockpit, but it's against



*FIG 1: The Hong Kong Court of Final Appeal, situated among the skyscrapers in Central Hong Kong, presides over Hong Kong's common-law legal system. Hong Kong tort law, which is essentially the same as that in 49 U.S. states and Canada, applies throughout Hong Kong and to aircraft, ships, and boats of Hong Kong registry. In fact, the tort law studied by law students is essentially the same tort law studied by law students in North America.*

airline policy for me to bother the pilots during final descent.”

And with that, the flight attendant turned and walked away. Sam winced and smooshed a cocktail napkin into his head to staunch the bleeding as much as possible. He winced to think it would be at least a couple of hours until he would be in his hotel room.

IN THE MORNING SAM WAS BOARDING THE KOWLOON STAR FERRY. Sure, he was sleep deprived and jet lagged, but he couldn't help smiling to be up and exploring Hong Kong. Just 20 minutes across the harbor to Central, where his friends were.

Sam opted for the upper deck where he could take in the sights. He went straight to the rail and started snapping pictures. The sun was shining brightly, and Sam was getting dazzling shots with his brand-new latest-generation Nebula i8 phone.

Behind him on the upper deck, two rambunctious boys were playing at wushu martial arts, running around among the chairs, feigning kicks and punches. If Sam could have understood Cantonese, he would have heard his fellow passengers talking about these two boys, Feng Fu and Tain Tuan: They always ride the ferry at this time of day, the passengers were saying, totally unsupervised. Meanwhile, their nanny, Analyn Achoe, habitually avoids them by hiding out on the lower deck. Both boys were good natured, but their diagnosed hyperactivity disorder and lack of awareness of their surroundings seemed to make them a perpetual menace to the passengers.

Sam, however, was oblivious to all of this. He was engrossed in photographing the sights. Besides, his head hurt. And still feeling somewhat woozy from the oxygen tank hitting him in the head, he had to concentrate to keep his balance as the ferry pitched and rolled with the waves.

With the boat now slowing as it approached the Central ferry terminal, Sam was trying to get all the pictures he could before he would need to disembark. Thus, he was caught completely unaware when one of the boys, five-year-old Feng Fu, crashed into Sam's legs, making him bobble the phone. As Sam stretched out his arms to grab it, 10-year-old Tain Tuan collided with Sam's back.

Sam tumbled over the railing and off the boat. He flailed wildly. In a flash of a moment, his feet were over his head, and Sam and the phone were overboard. SPLASH! The ocean came up and smacked Sam full in the face. As the water clapped over his ears and he sank under the waves, he was conscious of something – somebody – piercing the water a just a few feet away from him. He was flailing around trying to figure out which way was up when a strong pair of arms wrapped around him and pulled his head and shoulders out into the air and then hoisted him on to a life preserver. He cranked his head around to a brightly smiling face with eyes trying to blink out the saltwater.

“Penelope Perez. Nice to meet you,” she said, introducing herself. “Captain of the University of Nevizona swim team, so, you know, jumping into the water comes naturally to me. And you looked like you needed help.”



FIG 2: The Star Ferry takes passengers from Kowloon to Central on Hong Kong Island.

THREE DAYS LATER, Penelope and Sam were at the reception dinner seated at the table of honor with the bride and groom's parents. No one could get enough the story.

"So then Sam asked you as his date to the wedding?" the bride's mother asked.

"That's right," Penelope said.

"And did you get hurt jumping into the water?"

"Well, I injured my ankle," Penelope said. "Got a gash, and it turned out to have a minor sprain. But I got it patched up. Nothing I can't dance with."

Mindy turned to Sam. "How's the head?"

"Well, it got infected – I'm told that's probably a because I had to use a cocktail napkin instead of a clean bandage." Sam said. Then he smiled. "But it's nothing that will stop me from dancing."

## QUESTIONS

Analyze the following:

1. Liabilities, if any, of Constellation Air for injuries to Sam's forehead.
2. Liabilities, if any, relating to the occurrences on the Star Ferry, including liability, if any, of Analyn Achoe, Feng Fu, Tain Tuan.

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 each question will not be given equal weight. Divide your time among the questions according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs. Do not analyze issues or parties beyond what is called for in the questions.