
FINAL EXAMINATION - ESSAY

GENERAL INSTRUCTIONS:

1. Do not turn the page until instructed.
2. Failure to follow these instructions, including without limitation instructions 3 through 7, as well as matters of allowed materials, device usage, and time limits, are academic misconduct issues, and violations will be treated as such even if inadvertent.
3. All exam materials (including this booklet and your response) must be turned in at the end of the period **with your exam ID number written in the box above in the upper left. Do not disassemble this booklet, remove the staple, or tear pages.**
4. You may not waive anonymity. Use only your exam ID number on your response.
5. Copying the exam or any portion thereof is prohibited – including making a rough transcription from personal memory after the exam’s administration.
6. During the exam: You may not consult with anyone – necessary communications with the administrators/proctors being the exception. You may not view or attempt to view materials other than your own. Do nothing that would distract other students.
7. After the exam: Communicate nothing about the exam, including even vague impressions or characterizations, to any member of the class who has not yet taken it.
8. 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.
9. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. This is what you will be graded on.
10. Unless otherwise provided, base your legal analysis on the general common law and typical statutory law in the United States, including all rules, procedures, and cases from the course, plus any hypothetical laws presented in the facts.

Do not turn any page until instructed.

When instructed lift just this top sheet to look at the sheet underneath for additional instructions.

The additional instructions are on the next sheet, not the reverse of this sheet.

SPECIFICS FOR THE ESSAY PORTION:

11. You have a total of 2 hours, including an initial 30-minute reading-outlining-only period, described below.

12. This portion of the examination is **“open book.”** You may use any paper-based notes and books you like. No materials may be shared during the exam. No electronic or interactive resources may be used or referenced. During the EW Period (described below) you may use a computer (including a keyboard-configured tablet) to write your exam, provided it is running the required exam-taking software and is used pursuant to applicable policies. But you may not reference files stored thereon during the examination session. You may wear a regular watch. Otherwise, any touching, using, accessing, wearing, viewing or listening to any electronic device is prohibited. No smart watches. No phones.

13. 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 questions), to take notes, to reference your outlines and 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 and you may not use any computing device.** That is, if you are taking the exam on computer, you may not type any characters at all into the computer during the RO Period; and if you are taking the exam by handwriting, you may not make any mark in any blue book (that is, an exam-response booklet, sometimes labeled a “green book”) during the RO Period.

14. 90-MINUTE EW PERIOD: Next you will have a 90-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).

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 places.

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. As appropriate, you may, if you wish, note differences between minority and majority approaches in your answer, as well as statutory or other differences among jurisdictions.

17. Clarity counts. Clearly label each question separately in your answer. Be aware that there are no points to be won or lost for spelling, grammar, or stylistic aspects of writing—so long as I can understand what you are saying. Feel free to use abbreviations, but only if the meaning is entirely clear. **Blue books: Make sure your handwriting is legible. I cannot grade what I cannot read. Use a blue or black pen. Skip lines and write on only on one side of the page.**

Wait. Do not turn the page until instructed to begin.

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Panic at the Telescope

IT WAS ANOTHER NIGHT OF CRISP MOUNTAIN AIR, with a warm woolen blanket and a mug of hot cocoa under the starry sky. Lowell Liven punched in coordinates that would bring his telescope around to the same place in the constellation of Ursa Major he had been looking at last night. Servomotors hummed gently as the ten-foot-long telescope slowly swung around to the requested position.

Most lottery winners buy fast cars, swanky boats, or huge houses. Not Lowell. He went straight for his boyhood dream of building his own personal observatory. As soon as his numbers hit, he dropped his successful career as a real estate agent and started calling up the world's best optics makers.

Lowell had no professional role or status in the field of astronomy. Nor did he have any formal training. What he did have was enthusiasm – and equipment. He was the proud owner of a 2.1-meter-aperture reflecting optical telescope permanently installed in a newly built domed observatory building, about two miles outside of his hometown of Canyon City, New Merizona.

It was undoubtedly the largest, most expensive telescope in the world used exclusively by someone who had not taken even a single college course in astronomy or physics.

Lowell treasured his solitude up here. But tonight he wasn't alone. Sitting nearby on a stool thumbing notes into a phone was local newspaper reporter Alenush Adler. She was writing a feature piece on Lowell. Indeed, she felt lucky to get the interview. Lowell's lovable eccentricity had already gotten him featured on the nightly national news and interviewed as a guest on two national late-night talk shows. Alenush figured if she did a good job writing her article, it would probably get picked up on wire services by papers across the country. Who could resist reading about the lottery winner who spent his millions building a state-of-the-art observatory?

Alenush was happy to find Lowell personable and polite as soon as she arrived. "Welcome to my little place next to the stars," he said, immediately offering her a mug of hot cocoa. "I'm very happy to have you here as my guest. Please feel at home. Just don't go out on to the balcony. It's not finished yet."

When the telescope's servomotors whirred to a stop on the targeted piece of sky, Lowell looked through the eyepiece.

That was weird.

Lowell immediately pulled his head back, rubbed his eyes, and looked again. Then, as Alenush watched,



Fig 1: Lowell meets a visitor outside his observatory before sunset.

Lowell's eyebrows and mouth slowly rearranged themselves into wild, wavy shapes of abject panic.

"An asteroid!" Lowell blurted out.

He scooted his chair back, and his hands started flying over the various control panels and monitors arrayed around him.

As Alenush came around to watch over his shoulders, Lowell entered commands to have his computer calculate exact coordinates for the object. He then punched these into a website called FireballFinder.

"This is a website I found that was created by a PhD graduate student in astrophysics named Pitarra Pérez," Lowell explained. An annoying terms-of-use box came up. Lowell clicked "ACCEPT" on language providing that he would indemnify and fully hold harmless Pérez for any liability to third parties resulting from any inaccuracy in the information provided by the website.

"Hmmm. Obligatory legal stuff. Anyway, this website is a great resource. It was set up to help people with telescopes determine whether an object found in the night sky might be a threat to Earth. You put in coordinates, it calculates the sidereal motion and all of that."

Over the next few minutes, as Lowell kept checking back with the telescope, he observed that the asteroid's coordinates kept changing. Lowell entered these additional data points into FireballFinder.

It was only after a total of 10 minutes that FireballFinder returned a report. Alenush read it at the same time as Lowell:

OBJECT TRACKED IS CONFIRMED NEAR EARTH ASTEROID. EARTH COLLISION WARNING: OBJECT TRAJECTORY WILL INTERSECT WITH EARTH. POINT OF IMPACT IS CENTRAL CANYON CITY, NEW MEXICO, U.S.A.: TIME OF IMPACT IS 11:33 P.M. LOCAL TIME TONIGHT. FORCE OF IMPACT ESTIMATED AT 25 MEGATONS. LETHAL RADIUS OF TOTAL DESTRUCTION ESTIMATED AT 10 MILES FROM IMPACT POINT. ADDITIONAL FATALITIES ARE PROJECTED TO EXTEND BEYOND DUE TO BLAST WAVE AND EJECTA.

"WHAT ARE THE ODDS!?" Lowell shouted. "This would be only the fourth asteroid to be detected before hitting Earth! And the odds that it would hit within a couple of miles of the telescope that discovered it? We're talking about ..."

"Astronomical odds?" Alenush filled in.

"Yes," Lowell said. "It must be a billion to one! It's beyond astonishing. I've got to warn people! I'll do a text alert!"

Lowell then proceeded to ignore Alenush and get busy with what he saw as his scientific obligation to work the problem and do what he could to help save lives. The time was 8:27 p.m. — so there was no time to waste. He picked up his phone and sent a text alert to all of his former real estate clients — more than 200 people, at least half of whom resided in the Canyon City area.

His text alert read:

ALERT: Dear Friends, a just-discovered asteroid is due to impact the Canyon City area at 11:33 p.m. tonight. As incredible as this sounds, it is true: It has been independently confirmed by FireballFinder, a scientifically-respected source for calculations concerning near-Earth objects. Please be safe.

In fact, Lowell didn't know how respected FireballFinder was. But he figured it had to be if it was created by an astrophysics grad student.

Alenush was shellshocked. She wandered over to the other side of the telescope to gather her thoughts. As a journalist, she figured, her first obligation was to report the facts. So Alenush sent out this tweet to her thousands of followers, most of whom were in the Canyon City area:

Alenush Adler [Verified account](#) @AlenushAdler - 8:29 p.m.
Scientists confirm asteroid likely to impact Canyon City at 11:33 p.m. local time. Possible catastrophic destruction within several miles of central part of town. #emergency #evacuate #naturaldisaster

As soon as she sent the text, Alenush realized with grim resignation that she would not be able to get away from Canyon City – thanks to her tweet. It would take her nearly an hour on winding gravel roads to get from Lowell's property down to the intersection with Highway 38. And Highway 38 would be the only evacuation route for the whole area, given that the bridge was out on Highway 54 because of a construction project. Alenush knew enough about the population and geography of the area to say with certainty that Highway 38 would be so jammed that she couldn't make it 10 miles outside of town before 11:33 p.m.

Resigned to her fate, Alenush decided to go out on the wrap-around balcony to await her fiery death. With a heavy heart, she spent the next half hour reading social media about the panic that was sweeping through Canyon City. Vehicles were choking Highway 38, and in the chaos of people fleeing for their lives, there were several bad automobile accidents. Alenush walked around the balcony to the other side of the observatory dome to see if she could catch a glimpse of the traffic on Highway 38 in the distance. She stepped gingerly – trying to heed in spirit the warning Lowell had given her about the balcony being unfinished. But then she heard a loud crunching sound and felt the floor give way beneath her.

Tens of thousands of dollars' worth of construction crashed down around Alenush as found herself sliding helplessly down a muddy slope. She broke her foot as she collided with a signpost.

Stewing in anger, wincing in pain, and shivering in the mud, Alenush suddenly had a revelation: What if FireballFinder was inaccurate? She googled it, and sure enough she quickly found out that FireballFinder had been set up by that astrophysics grad student, Pitarra Pérez, as a joke. Originally, it was an April Fool's joke meant for a couple of Pitarra's friends. But she left the site up because it gave many people a laugh. The website worked by checking the IP address of the person accessing it, and then it used this to locate the user geographically. The asteroid

warning was accordingly customized to indicate that the asteroid was aimed precisely at the user's location.

It took Alenush three minutes of searching the internet to find scores of posts on astronomy blogs talking about the phony nature of FireballFinder. *How could Lowell have been so stupid?* Alenush wondered. *How could I have been?*

"Lowell!" she hollered up to the dome. "FireballFinder's a joke! It's a prank! There's no threat!"

"I figured that out!" Lowell hollered back. "I just got off the phone with NASA — they were really angry! I'm trying to let people know! I'm sending out follow up text alerts and calling emergency responders!"

Smarting with pain from her broken foot, Alenush started thumbing out a series of angry tweets:

Alenush Adler [Verified account](#) @AlenushAdler - 9:01 p.m.

I'm up here at the telescope outside of Canyon City with the biggest fraudster in New Merizona. He's as much as admitted he concocted this disaster on purpose.

Alenush Adler [Verified account](#) @AlenushAdler - 9:02 p.m.

This is what he said to me:

"It's against astronomical odds that the 4th asteroid to be spotted in space before hitting Earth and would hit the telescope that found it. It's billions-and-billions to one against. Not plausible. But I'm going to send out a text alert."

Alenush Adler [Verified account](#) @AlenushAdler - 9:03 p.m.

He sipped hot cocoa while panic swept the streets of his hometown.

THE HUMAN FACE OF THE TRAGEDY ENDED UP BEING five-year-old Herschel Hayden and his nine-month-old baby sister Gillian Griffith. Both were both in the car with their adoring mom, Kika Kirkpatrick, driving out of town, when their vehicle was hit at high speed by a panicked driver of a large truck. Herschel and Gillian both suffered broken bones and soft-tissue injuries in the collision. Kika, in the front seat, was physically unscathed. Sadly, with the amount of people on the roads and the burden on emergency responders, Kika could not get her kids to a hospital for another 12 hours. In the intervening time, both children suffered horribly. When they finally got to the hospital, their suffering was alleviated with pain killers. But they had to undergo multiple surgeries and medical interventions. Herschel, happily, was able to make a full recovery. But Gillian's injuries were too severe, and she died within a week.

IN THE ENSUING WEEKS AND MONTHS, academics and government officials poured over the details of what had gone wrong. One blue-ribbon panel of distinguished experts produced a document that became known as the Rollins Roundtable Report on the Canyon City Tragedy. That report determined that either Lowell Liven's text alert or Alenush Adler's tweet would have been sufficient by itself to start the panic. Coming to a contrary conclusion was the Senate Select Study Panel on the Asteroid

Panic, set up by the New Merizona state legislature. That investigative body determined that it was more probable than not that it took both Lowell Liven's text alert and Alenush Adler's tweet to cause the population of Canyon City to be sufficiently convinced their lives were in danger to set off the deadly rush that claimed Gillian Griffith's life and injured Herschel Hayden.

Both investigative panels worked shared resources to investigate the question of what it was that Lowell Liven saw through his telescope that night. Initially, there were no leads, and it seemed like the mystery object might never be identified. But after months of subpoenas, open-records requests, and legal challenges, it was eventually determined that the "asteroid" Lowell saw was actually an experimental aircraft called the "Delta Dirigible" operated by NASA, the federal agency for space exploration and aeronautical research. Essentially a cross between a weather balloon and a drone, the Delta Dirigible was built and operated by NASA's Extremely Advanced Projects Office to test the ability of amateur astronomers to detect near-Earth objects. Both the Senate Select Study Panel and the Rollins Roundtable Report singled out NASA for negligent and irresponsible conduct, since documents showed that NASA executives actually anticipated having the aircraft spotted by telescope users who would lack the knowledge to understand what they were seeing.

THE PROFESSIONAL ASTRONOMY WORLD WAS SHAKEN, and the scientific community's opinion turned harshly on Pérez. But it didn't hurt her career-wise. Her dissertation was already formally approved, and she was set to graduate within weeks. What is more, like a growing number of math-intensive PhDs, Pérez had already decided to shun science for finance. In fact, she was already earning a seven-figure-a-year compensation package running a hedge fund.

PERHAPS NO ONE WAS AFFECTED MORE DEEPLY than Lowell himself. At one point, he was pointedly asked in front of cameras what he should have done differently. With a look of stunned dismay and a tear rolling down his cheek, he answered softly, "I should have built a planetarium."

Questions are on next page ...

Here are some suggested abbreviations for your answer:

AA	Alenush Adler
CC	Canyon City
DD	Delta Dirigible
FF	FireballFinder
GG	Gillian Griffith
HH	Herschel Hayden
KK	Kika Kirkpatrick
LL	Lowell Liven
PP	Pitarra Pérez
RRR	Rollins Roundtable Report on the Canyon City Tragedy
SSS	Senate Select Study Panel on the Asteroid Panic

QUESTIONS

Provide analysis for the following. For all questions: **Omit all discussion of remedies, except as provided. Omit analysis and discussion of any form of vicarious liability.** For any given question, **limit your discussion to the parties specified in the question.** Do not speculate as to the liability of or possibility of recovery in favor of unmentioned third parties. Assume that **New Merizona is a contributory negligence jurisdiction.**

1. Discuss prospects for liability of Lowell Liven and Alenush Adler to Herschel Hayden, Kika Kirkpatrick, and the estate of Gillian Griffith. Briefly analyze compensatory damages for Hayden, Kirkpatrick, and the Griffith estate.
2. Discuss prospects for liability of Pitarra Pérez to Herschel Hayden, Kika Kirkpatrick, the Gillian Griffith estate, Lowell Liven, and Alenush Adler. Briefly address issues of indemnification and contribution vis-à-vis Pittara Pérez and Lowell Liven; in this regard, don't speculate on the enforceability or validity of the clicked-on indemnification agreement on the website, but instead opine as to its effect if it is held valid and enforceable.
3. Discuss prospects for liability with regard to the balcony collapse and Alenush Adler's fall, assuming the parties to the suit are Alenush Adler and Lowell Liven.
4. Discuss prospects for liability of Alenush Adler to Lowell Liven for defamation.
5. Very briefly, in no more than two-to-three sentences, opine as to whether Twitter may be liable for defamation on the basis of Alenush Adler's tweets.
6. Very briefly, in no more than two-to-three sentences, opine on the prospects of liability, if any, of the federal government for launching the Delta Dirigible experiment. Begin from the assumption that the care undertaken by NASA's Extremely Advanced Projects Office fell below that of the reasonable person in its position.

Important: **Limit your discussion to the questions posed.** Also: **Please do not repeat the exact same analysis when discussing a different party or answering a different question.** Instead, I strongly encourage you to 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. And correspondingly: **Do not expect that each question calls for an equal share of your time or words. Consider that any given question might be appropriately answered with substantial brevity or might require in-depth treatment.**

