

FINAL EXAMINATION

TORTS

PROFESSOR RUSSELL

INSTRUCTIONS:

1. **DEADLINE:** This is a three-hour examination. You may begin the exam at any time between 4 pm and 7 pm on 3 May 2004. The exam is due within three hours after you begin. If you start the exam at or after 7 pm, then the exam is due at 10 pm. This means, for example, that if you wait until 8 pm to start the exam, then you will have only two hours to complete it. In no cases are you permitted to turn the answers to your exam in after 10 pm. **If you take more than three hours to complete the exam or if you return the exam after 10 pm, you get zero points for the exam. NO EXCUSES.**
2. **TURNING IN YOUR ANSWERS:** You may turn in your answers by following the instructions provided to you when you picked up the exam.
3. **OPEN-BOOK:** This is an open-book, take-home examination. Your answer must be of your own composition. You may work on this examination wherever you wish, and you may consult any written material that you wish. However, you violate the Honor Code if you show or distribute this examination to anyone at all before you turn in your answer, and you violate the Honor Code if you discuss this examination with anyone before you turn in your answer.
4. **EXAM NUMBER:** Please put your exam number on each page. The easiest way to do this is to put the exam number in a header on each page. **Do not put your name anywhere on the exam.**
5. **LENGTH:** This examination consists of one question. Your job is to produce a typed—that is, **not hand-written**—answer of no more than 2,500 words.
6. **SPACING:** Please try to double-space your answer. Avoid miniature fonts, okay?

MID-YEAR EXAMINATION—TORTS

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3 May 2004

Page 2 of 7

7. **HOW TO ANSWER:** In answering, use judgment and common sense. Emphasize the issues that are most important. **Do not spend too much time on easy or trivial issues at the expense of harder ones.** If you do not know relevant facts or relevant legal doctrine, indicate what you do not know and why you need to know it. You must connect your knowledge of law with the facts before you. **Avoid wasting time with lengthy and abstract summaries of general legal doctrine.** Discuss all plausible lines of analysis. Do not ignore lines of analysis simply because you think that a court would resolve an ambiguous question one way rather than another.

8. **CONCISION:** Quality, not quantity is desired. Think through your answer before you begin to write. You have a lot of time to write your answers. Concision will win you points. Good organization will win you points as well.

9. **YOURS TO KEEP:** You may keep your copy of the exam.

10. **CHEATING:** If, in preparing for this examination you have violated the Honor Code, or if, during this examination, you violate the Honor Code, the best course of action is for you to report to the Dean of Students immediately after this examination ends.

11. **GOOD LUCK:** Good luck and congratulations on nearly finishing your first year of law school.

“Fieldtrips”

You are an associate at the law firm of Rogers and Walsh. The firm’s partners are considering whether to represent two people who were injured in separate incidents on the grounds of the Kentnor School for Creative Learning, a private school located in the city of Burg. Burg is located in the state of Newerstate, which has recently joined the United States as the 51st state.

The Kentnor School is a private school for students who are gifted academically. The school emphasizes environmental education, and the property that the Kentnor School owns includes a 40-acre wetland. A good-sized stream runs through the center of the wetland but most of the wetland area is a marshy, cattail-filled, swampy area with a great many birds, especially red-winged blackbirds, ducks, and a few red-tailed hawks. The school’s teachers often use the wetlands for fieldtrips during which the students collect water samples, observe outdoor life, and learn about science.

Burg Elementary, a nearby public school that is part of the city of Burg public school system, often sends fieldtrips into the Kentnor School wetlands. The Kentnor wetlands are not fenced, although a tall, earthen barrier separates the wetlands from nearby streets. To get into the wetlands, one need only hike one-quarter of a mile from the nearest street. It’s easy to walk up and over the earthen barrier. Burg Elementary’s students hike into

the wetlands several times a year for fieldtrips. Likewise, the Kentnor wetlands are a popular spot for dog owners, who like to let their dogs run off-leash in the wetlands.

Here's what happened with the injuries:

On 13 November 2001, Sarah, a Kentnor School student, was 12 years old. She and her Kentnor classmates were studying the migratory habits of wetlands birds, and they went to the wetlands with their teacher. It was a cool day with a clear blue sky—wonderful fall weather for Newerstate. Sarah was crouching along the banks of the stream that runs through the wetlands. She was observing a wood duck through a pair of binoculars.

As Sarah watched the duck intently, she did not hear Molly creeping along in the brush nearby. Molly was a 6-year-old student from Burg Elementary; her parents were successful business people with one of the largest houses in town. Molly had come to the wetlands with her teacher, Ray. Ray was a new teacher. Teaching first grade at Burg Elementary was Ray's first teaching job; he had graduated from college in June 2001. He was glad to have a job in order to begin paying off the mountain of student debt that he had from college. He lived in an apartment with some friends from college.

Ray and Molly were mischievous. Ray and Molly saw Sarah sitting close to the stream, and they decided to play a little trick on Sarah. Ray and Molly hatched a plan to scare Sarah. Their plan was that Molly would sneak through the bushes and grass near Sarah

until Molly was close enough to grab Sarah's ankle. Just as Molly got close enough, she and Ray agreed that Ray would roar loudly like a lion or a tiger and then Molly would pounce onto Sarah's ankle. They anticipated this would be a funny trick to play on a Kentnor student.

Ray roared, Molly pounced, and Sarah reflexively leaped forward. Sarah screamed and fell into the stream. She hit her head on a rock that protruded above the surface of the water in the stream. The blow to her head knocked Sarah out and her unconscious body started to drift slowly downstream. She lost consciousness and was deprived of oxygen for many minutes before she could be rescued. For 9 months following the accident, she was in a coma. Once she awakened, she spent another 3 months in the hospital. After that, she convalesced for a year at home, nursed by her mother, who quit her job in order to care for her daughter. Damage to her brain has resulted in loss of cognitive function that will prevent her from developing beyond the intellectual level of a young adolescent.

The second injury--an animal attack--is likely to be less lucrative for the firm. This injury happened just six months ago. Dan, who lived in the neighborhood near the Kentnor School, was walking his dog Augie in the wetlands one morning. Augie loved to chase birds in the wetlands, but he was such a slow dog that he never came close to catching one. On the day of the injury, Dan was letting Augie run, as he usually did. A group of Burg students and their teacher were in the wetlands for a fieldtrip that day; they were investigating the growth habits of wetland plants. As Augie ran, one of the Kentnor

wetlands red-tailed hawks dropped from the sky and sunk its talons into the dog. Augie was too big for the hawk to carry off. Surprised and frightened, Augie spun around and lunged for Pamela, a 10-year-old Berg student. Augie bit off her pinky finger. Surgeons were not able to re-attach the finger.

Please advise the firm's partners as to the likelihood of a successful suit by Sarah against Molly, Ray, Burg Elementary, the Kentnor School, or any other likely defendant.

Likewise, evaluate the prospects for a suit on Pamela's behalf against the Kentnor School, Dan, or any other likely defendants. Attached, you will find some Newerstate statutes that may prove relevant. Be sure to indicate if there are other statutes that you may need to consult.

SELECTED NEWERSTATE STATUTES

Statute 1. Limits on Suits against Landowners.

An owner of land who permits the public to use such land for recreational, educational, or ecological purposes without imposing a charge or fee therefor, or who leases his land for said purposes to the state or any political subdivision thereof shall not be liable to any member of the public who uses said land for the aforesaid purposes for injuries to person or property sustained by him while on said land in the absence of willful, wanton or reckless conduct by such owner, nor shall such permission be deemed to confer upon any person so using said land the status of an invitee or licensee to whom any duty would be owed by said owner.

Statute 2. Suits against Public Employers.

Public employers shall be liable for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any public employee while acting within the scope of his office or employment, in the same manner and to the same extent as a private individual under like circumstances.

Statute 3. Limits on Suits against Public Employers.

Statute 2 shall not apply to:

The provisions of sections one to eight, inclusive, shall not apply to:--

(a) any claim based upon an act or omission of a public employee when such employee is exercising due care in the execution of any statute or any regulation of a public employer, or any municipal ordinance or by-law, whether or not such statute, regulation, ordinance or by-law is valid;

(b) any claim based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a public employer or public employee, acting within the scope of his office or employment, whether or not the discretion involved is abused; or

(c) any claim arising out of an intentional tort, including assault, battery, false imprisonment, false arrest, intentional mental distress, malicious prosecution, malicious abuse of process, libel, slander, misrepresentation, deceit, invasion of privacy, interference with advantageous relations or interference with contractual relations.

Statute 4. General limitation of actions - one year.

The following tort actions: assault, battery, false imprisonment, false arrest, libel, and slander shall be commenced within one year after the cause of action accrues, and not thereafter.

Statute 5. General limitation of actions – three years.

The following tort actions: actions for negligence, trespass, malicious abuse of process, malicious prosecution, outrageous conduct, interference with relationships, and tortious breach of contract shall be commenced within three years after the cause of action accrues, and not thereafter.

END OF EXAMINATION

Submit your exam at http://www.law.du.edu/russell/exam/exam_submit.cfm