

FINAL EXAMINATION

TORTS

PROFESSOR RUSSELL

INSTRUCTIONS:

1. **DEADLINE:** This is a six-hour examination due by 4:00 pm on 7 May 2001. **If you return the exam after 4:00 pm, you get zero points for the exam. NO EXCUSES.**
2. **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 answers, and you violate the Honor Code if you discuss this examination with anyone before you turn in your answer.
3. **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.
4. **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.
5. **LENGTH:** This examination consists of one question. Your job is to produce a printed--that is, **not hand-written**—answer of no more than 2,000 words.
6. **SPACING:** You may single-space or double-space your answers, as you prefer.
7. **HOW TO ANSWER:** In answering each question, 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 tort law with the facts before you. **Avoid 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.

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

10. **GOOD LUCK:** Thank you very much for making my first year at the University of Denver such a fine year. Good luck and please keep in touch with me.

(The Question Begins on the Next Page.)

QUESTION (Your answer can be up to 2,000 words)

In the fall of 2000, Corey, Jennifer, and Kristin were 19-year-old sophomores at Party University (PU), a state university. The three young women were roommates, and early in September, they decided to mark Corey's 20th birthday by having a big party.

The roommates live together in a house that Jennifer's parents own. The house is located in a residential area of Party City. Jennifer lives there for free, but Corey and Kristin each pay \$550 per month to live there. The neighborhood in which the roommates live includes families and older people, as well as students living together in rental houses. One block south of where the roommates live, nearly all of the houses are owner-occupied.

In preparing for the party, Corey, Jennifer, and Kristin hired a D.J. and asked some friends who were old enough to buy alcohol legally to purchase alcohol for their party. The roommates' friends bought 5 kegs of Keystone Light, a Coors company product. (Each keg can dispense 165 12-ounce beers.) They supplemented this with 5 gallons of hard liquor, mostly vodka and whiskey.

The roommates invited 50 friends to Corey's birthday party, emphasizing that gifts were not expected. The party was to start at 10 p.m.

Invited guests started arriving at around 10:30 p.m. The roommates opened up the house's front door, put one keg with a tap on the front porch where it was visible from the street, and turned on all the house's lights. They did not have anyone at the door to greet guests nor to turn away anyone who "crashed" the party (that is, showed up without having been invited). Nor did anyone check the ID's of those who came to the house for the party to ensure that they were over 21 and therefore old enough to drink alcohol.

By 11:30 pm., there were 150 party guests and two of the kegs and about one-third of the hard liquor had been consumed. By midnight, another 75 guests had come to the party. The guests included roving bands of PU students who saw the keg on the porch and joined the party. There were also non-students who had come up from the city of Gotham, which was about 30 miles away. The Gothamites came looking for free beer, things to steal, and for sex with PU undergraduates.

The parties were in the front yard and throughout the house; and more than half of the guests were in the backyard. The roommates had set out a few chairs and a couch in the fenced backyard.

Most of the backyard was an unkempt, weedy lawn. In parts of the yard, the weeds were about 18 inches tall. Earlier in the day, while preparing for the party, Corey noticed that there were some broken bottles among the weeds. She meant to pick them up before the party started, but she never got around to doing so.

They tapped the last keg at 12:15 a.m. The hard liquor lasted until 12:30 a.m. By this time, 6 different guests had thrown up in roommates' bathroom.

Just when the final keg was nearing depletion, one of the party guests, Gregg (a 20-year-old Gothamite who was not a PU student and who had crashed the party) attempted to get more beer out of the keg by pumping air into the keg using the tap. (Pumping the tap forces more air into the keg, and the increased pressure allows the beer to flow out of the tap.) As Gregg was pumping the tap, the pressure inside the keg unexpectedly forced the tap's handle out of the tap's piston. The handle flew off the tap with a large pop, and the black handle on the tap hit Gregg directly in the left eye.

Just at this moment, the police showed up to break up the party after having received 8 noise complaints from the neighbors. When the police arrived, some of the guests in the backyard sought to exit the party by going out the back gate. However, the gate was jammed shut, so some of the guests started climbing over the rear fence.

While hurrying through the tall grass near the rear fence, an 18-year-old PU student named Althea slipped and fell. Althea had not been drinking alcohol at the party. Her outstretched palm fell directly upon one of the broken bottles in the grass, and Althea felt a sharp pain as the glass sliced through some of the tendons and an artery in her left wrist. Althea, a cellist in the PU symphony orchestra, had been invited to the party by Jennifer. As she felt the injury to her wrist, Althea worried that she would lose her music scholarship, would have to drop out of school, and would have to forego her dream of becoming a professional musician.

When Althea fell, Prentiss tripped over her. Prentiss was also a PU student. The roommates had not invited him; and he had come into the party with a group of 6 friends who had been out in the neighborhood looking for parties and beer. Prentiss, who had not let the fact that he was only 18 years old keep him from drinking 12 beers at the party, was very, very drunk. Like Althea, he too fell onto a broken bottle in the tall weeds. The bottle punctured his right hand and nearly sliced off his thumb.

The Party City police began to ask the party guests to leave. When the police got to the backyard, Loree leaped over the fence. Although Loree was drunk, she had been a collegiate high jumper and so she was able to get over the fence easily. At the party, Loree had been flirting with a small, bespectacled freshman named Brian. Brian was 19 years old. She had told Brian that she was a PU student, but this was not quite true. At one point she had been a PU student, but she had dropped out when she had been charged with second-degree murder. Because the Party City District Attorney was inept, she had beaten those charges. From time to time, she returned to Party City looking to crash student parties and seeking to prey on vulnerable men. Loree was 23 years old.

As she stood in the alley, Loree realized that she did not want to lose the effort she had invested in Brian. Loree reached over the fence and pulled Brian over into the alley

where her car was parked. Brian (who in the dim moonlight in the alley looked a bit like a weasel) was flattered and impressed by Loree's attention. She put Brian in the front, passenger seat of her red truck, which impressed him all the more. Brian's excitement turned to worry only when he discovered that as Loree hugged him in the front seat, she had handcuffed his left hand to the seat. But he laughed, thinking that perhaps this was the sort of thing that college students routinely did together. With Brian thus secure, Loree climbed into the seat of her truck and drove off, fast.

As Loree drove off, Terry jumped over the fence as well. When he hit the alley, he heard a pop and felt his right knee buckle. He hobbled away from the party, wincing in pain. The next day, his doctor informed him that he had broken his Anterior Cruciate Ligament (ACL) and would require reconstructive surgery.

At about the same time, Jay climbed into his car. Actually, the car belonged to Party City, because Jay worked for Party City. He came to student parties looking for sex. Although he was 25 years old, he believed he could pass for younger. Few were fooled.

Jay was at least as drunk as Prentiss, but he had delusions of competence that included the idea that he was able to drive well when drunk. In truth, he was a better drunk driver than most drunk drivers. He sped off, swerving not at all. One-half mile away, the headlights in Jay's Explorer suddenly went off as an electrical component in his Explorer failed. Had he been sober, he might have had time to react quickly enough to stop his car safely, but the Keystone Light had slowed his reflexes. Jay died instantly as his Explorer slammed broadside into Donna's minivan. Donna, who had not been wearing her seatbelt, was thrown from her vehicle, onto her head. (She suffered neurological injuries but would eventually fully recover except that she lost the power of speech, which spelled the end of her career as a videographer.) Her van, which contained \$350,000 worth of video equipment, burst into flames and was a total loss.

Meanwhile, Brian was screaming at Loree to release him. The excited anticipation that he had felt when leaving the party with her had quickly given way to fear, as she had begun deliberately swerving her truck close to each telephone pole that they passed. When Loree got to the freeway, she accelerated to 110 mile per hour, which terrified Brian. In his terror, Brian came even more to resemble a weasel.

Seventy miles away, when Loree stopped for coffee at a McDonald's, Brian was able to slip out of the handcuffs and escape. After Loree had driven off, Brian went into the McDonald's and asked the manager to call the police.

PLEASE DISCUSS THE TORT CLAIMS, if any, of Gregg, Althea, Prentiss, Brian, Terry, Jay's family, and Donna. Be sure to consider the insurance that Jennifer's parents have on the rental house and any applicable automobile insurance.

END OF EXAMINATION

MEMORANDUM

To: Torts Exam number «MY»
From: Thomas D. Russell
Re: Torts Examination and Final Grade
Date: 16 JULY 2001

The final examinations in this course were very strong, which was consistent with the generally high level of performance on the writing assignment, during class discussion, and on the TortsBoard. I was particularly pleased with the organization of your answers. I believe that the writing assignment contributed to improved organization on the final examination, and I expect that better organization will pay off for each student in the class during the remaining two years of law school.

The final examination asked you to consider the injuries to a number of different possible plaintiffs from several different angles. For each plaintiff, you should have considered the possibility of an action founded in negligence, products liability, or intentional torts. Most injuries might have fallen into at least two of these categories, and the strongest examinations considered injuries from the point of view of different causes of action. For instance, Gregg's injury from the tap handle might lead to a products liability claim or a negligence suit against the party hosts. The best answers considered all the possibilities.

Likewise, there was an array of possible defendants for nearly every injury. Again, to take the example of Gregg's injuries, he might sue the manufacturer (and/or distributor) of the tap. He might also sue the student hosts of the party and the parents who owned the property. Again, the strongest answers considered several of the different possible defendants and did not limit the analysis to a single defendant.

Another important aspect of the examination was the shifting status of the persons who attended the party and were injured. Many arrived without invitations, but the best answers considered whether these invitation-less guests were converted to licensees or invitees by the way in which the hosts opened the party to all the world. Weaker answers treated anyone without an invitation as a trespasser.

As well, many of the claims against the student-hosts or the parents who owned the property might have been considered as either actions based upon *conditions* of the land or as *activities* upon the land. The latter categorization made the status of the injured party irrelevant. Only the very best answers layered the status/condition issue onto the other matrices.

My assistant has a binder with three high-scoring student answers, which you may consult to see good examples of the foregoing analysis. Each answer is imperfect, though still quite strong.

Your point totals for the examination and course, along with your course grade, were as follows:

[Note that in the memo that you will find attached to your exam, your actual point totals are inserted in the following table.]

Final Examination	«points»
Mid-Year	«Total»
Writing Assignment	«Writing»
Point Total	«Totalpts»
Course Grade	« FinalGrd »

The distribution of points on the final examination and course were as follows:

	Final Exam	Course
Max.	263	521
Min.	223	439
Mean	243.7	483.1
Std. Dev.	9.5	16.2

Grades were distributed as follows:

Points	Grade	Frequency
> 506	A	7
494-506	A-	12
485-493	B+	11
479-484	B	15
474-478	B-	8
469-473	C+	6
463-467	C	5
458-462	C-	3
450-457	D+	1
< 450	D	2

Please note that computational errors are the only basis upon which the law school allows grade changes. If I have made an error either in transcribing your grade or in adding your points for the course, then I am permitted to submit a grade change request, and I will gladly do so. However, you may not lobby for more points or a higher grade. For this reason, please check my addition and recording of your points. If there is a problem, please send me e-mail so that we can arrange to look into the matter.

Thanks for a great year. Good luck with the remainder of law school.