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Torts I

ESSAY
ISSUE
SPOTTER

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30/45 FORMAT PRACTICE FINAL ESSAY EXAM

Hollerer's Hill

PRACTICE EXAM

GENERAL INSTRUCTIONS:

1. 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 ID number written in the box above.**
2. Do not turn the page until instructed to begin.
3. Assume that today's date is the regularly scheduled date for the exam administration.
4. 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.
5. **Your goal is to show your mastery of the material presented in the Torts II course and your skills in analyzing legal problems.** It is upon these bases that you will be graded.
6. 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.
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 exam information to the same.
8. 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.

SPECIFIC INSTRUCTIONS FOR ESSAY:

9. You have a total of 1 hour 15 minutes.
10. 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 question or questions), take notes, to reference your outlines or 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.** That is, if you are taking the exam on computer, **you may not type any characters at all into the exam response file on your computer during**

the RO Period; and if you are taking the exam by handwriting, you may not make any mark in a blue book (that is, an exam-response booklet, sometimes labeled a "green book") during the RO Period.

11. 45-MINUTE EW PERIOD: **Next you will have a 45-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 is allowed during the RO Period (e.g., to refer back to the exam booklet, reference your notes and books, etc.), including notes you created during the RO Period.

12. 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.

13. 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.

14. Organization counts.

15. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right place.

16. Feel free to use abbreviations, but only if the meaning is entirely clear.

17. **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 question.**

18. **Computers:** Please clearly label each question in **your answer.**

19. This Part II 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.

20. 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 ID number appropriately. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.

21. Good

luck!

Hollerer's Hill

TERRENCE TURNER HAD ANYTHING BUT A SUNNY DISPOSITION. Which was ironic. Terrence, after all, was the newly installed Chief Enthusiasm Officer at Morgan Morgan & Co.

Morgan Morgan & Co. is a boutique investment bank that provides innovative capital solutions for high-risk/high-reward cutting-edge ventures. That is, Morgan Morgan & Co. gets financing for companies that are too risky to find financing elsewhere. The problem for Terrence was that the financial whizzes who worked for the bank acted bored and listless.

Terrence decided to take action. He dug in his desk for a business card he'd pocketed a while ago from Exotiquet Extreme Expeditions Co., an adventure tourism operator. An employer-paid adventure-tourism activity packed with surprise activities was exactly the right prescription to perk up the esprit de corps.

Announcing a "MYSTERY ADVENTURE TREK" with an e-mail blast, Terrence got 30 investment bankers to volunteer. And just a few weeks later, the group from Morgan Morgan & Co. were trekking through the wilds of Coulissee Canyon on an expedition led by Exotiquet's top guide, Nettie Naynor.

NETTIE TOOK THE BANKERS ON A TWO-HOUR HIKE TO THE TOP of Hollerer's Hill, where Exotiquet had planned its marquis extreme experience. Arrayed along the crest of the hill was a set of mountain bikes – all from the upscale brand Umatilla Unlimited.

"Surprise: You're going mountain biking. Are you ready for the most extreme mountain biking ever?" said Nettie.

Nettie got no reaction from the Morganeers other than some nervous fidgeting.

"Who would like to be the first one down?" Nettie asked. "Whoever goes first will have the easiest time."

"Then I'll be first," Vlad Vossi volunteered. "I'm glad to get it over with."

Quickly grabbing a bike, Vlad started down the mountain. Vlad actually knew what he was doing. He had worked in a bike store throughout college, and he had done a lot of mountain biking. And from Vlad's perspective, he was happy to get away from the Exotiquet tour. Very quickly he made his way down the hill and out of sight of the rest of the group.

Vlad was just beginning to enjoy himself when he took a low jump over a little ledge, and the bike just fell apart underneath him. Vlad tumbled through the air, and he landed with a crash, his right arm impacting hard rock. Disoriented and in extreme pain, he fought to understand what had happened to him. Then he caught sight of his arm. It almost made him throw up: He could see the broken end of a bone, the ulna, pushing up under his skin. Knowing what needed to be done, Vlad felt around with his left hand for something to splint it with. What he found was a piece of bike frame that had broken from the rest of the aluminum frame in two places. Once he'd used it to splint his arm, he noticed the manufacturing date (March 2000) and the model of the bike (the UUX8). He experienced a flash of recognition: *The notorious Umatilla Unlimited frame recall.*

The company had recalled thousands of bikes because of a welding problem. It was when Umatilla started using robotic welding for their bike frames. The whole first lot – including this bike – had incomplete welds because of a software problem

with the machines. Vlad had probably been injured on the last botched UUX8 that hadn't been returned to the company.

Meanwhile, up on the summit, Nettie was winding up to the big reveal:

"The rest of you are going to face a more difficult challenge. Riding a mountain bike down a steep hill is hard enough. But it's even more difficult to do when you are in a war zone! Exotiquest guides across the valley will be firing mortar rounds at those who lag behind! You'd better go!"

No one moved. Everyone just stared at Nettie in disbelief.

BOOM!

An explosion behind the group sent dirt flying everywhere. At that, all of the bankers got on their bikes and started pedaling as fast as they could downhill.

BOOM! Another blast went off in a clump of trees. People were screaming and pedaling furiously to get ahead of the shelling. BOOM! BOOM! BOOM!

Nettie watched the Morganeers ride away, terror-stricken. Then she had a good laugh. She was now standing on the top of the hill, alone with Terrence.

"Those charges sure do make it seem like we are under attack, Nettie." Terrence chuckled.

BOOM! Another concussion echoed around them.

"I know. But they are basically just industrial-sized firecrackers. They don't send out any shrapnel," she explained. "They just make a lot of noise. And the whole thing is being done with the utmost care. We wouldn't want to blow up any of your employees."

BOOM!

And then the ground started shaking and vibrating.



FIG. 1: Under the right circumstances, mountain biking can actually be fun.

Suddenly Terrence felt worried. "Is that another special effect, Nettie?"

"Um, no." Nettie said pointing to a gathering cloud of dust below. "I think it's a rock avalanche."

The force of the blasts had somehow started a landslide. Within seconds, the whole mountainside was coming apart in a thundering cascade of rock and dirt. Unable to see through the clouds of dust, Terrence couldn't tell if people were safe or in danger. Then Terrence's phone rang, and he started getting reports of what was happening below.

It was utter catastrophe. Wendy Wolkins, a vice

president, was injured when a huge boulder struck her. Yessenia Yarbrough, a third-year associate, was trapped under rubble, bleeding internally from a crushed ribcage, suffering excruciating pain. When they'd started down, they had anticipated the possibility of getting hurt. But they had been thinking something more like scrapes and bruises, not a rock avalanche.

QUESTIONS

Analyze the following:

1. Liability of Umatilla Unlimited with regard to Vlad Vossi for strict products liability

Omit discussion of any affirmative defenses.

2. Liability of Exotiquest with regard to Wendy Wolkins and Yessenia Yarbrough

Omit discussion of comparative fault (a/k/a comparative negligence) as an affirmative defense.

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 other than those specified.

Some abbreviations you can use, if you like:

Coulisse Canyon	CC
Exotiquest Extreme Expeditions Co.	EE
Morgan Morgan & Co.	MM
Nettie Naynor	NN
Terrence Turner	TT
Umatilla Unlimited	UU
Vlad Vossi	VV
Wendy Wolkins	WW
Yessenia Yarbrough	YY

CREDITS AND NOTES

The material in this box is not part of the hypothetical facts for the exam.

Fig. 1, photo "Mountain bike jump" by Andy Armstrong, © 2010 Andy Armstrong, licensed under a Creative Commons Attribution-Share Alike 2.5 Generic license, available at <https://creativecommons.org/licenses/by-sa/2.5/>.

This practice exam was made by abridging and modifying the publicly released Spring 2015 Torts II exam, "Coulisse Canyon." Model answers for the original and this abridged version are available online at ericejohnson.com/exam_archive.