

LAW 201, Torts

Instructor in Charge: Professor Schwartz
Time Allowed: 3 hours and 30 minutes
Open Book

LAPTOP USERS: Create a header in a new Word document that includes your exam number, course name, instructor name, and semester. Title the document with the course name, instructor name, and your exam number (e.g.: Legal Profession_knowledge_Exam #) and save it to your hard drive. Be sure to format your document with page numbers and double-spacing.

WRITERS: Place your exam label or clearly print your exam number on the cover of all bluebooks. Write the course name and instructor's name on each bluebook. Number your bluebooks to indicate their order, and state the total number of bluebooks that you are submitting (1 of 6, 2 of 6, etc.) Please write only on every other line of the page.

SPECIAL INSTRUCTIONS:

1. This is an open book examination. You may use your casebook, TORTS STORIES, class handouts, any notes you have prepared, and outlines that you prepared. You may use handouts, notes and outlines only in hard copy. You may not view electronically stored versions of these materials, and you may not cut-and-paste from them. You may not consult or otherwise use commercial outlines during the exam. You may not access the internet during the exam.
2. There are 2 questions on 7 pages. Please be sure that your copy of the exam contains all 7 pages.
3. In addition to demonstrated knowledge of the subject matter, the instructor will consider responsiveness, logical organization, and clarity in evaluating your answers.
4. The instructor has tried to include all necessary facts and instructions in the questions. If, however, you discover that a material fact or instruction is omitted or ambiguous, assume that fact or instruction and state that you have done so.
5. This examination consists of two questions. Each is worth the same amount of credit. Please allot your time accordingly. Analyze the questions and organize your answers before writing.

6. Please double-space your answer.

7. You will be given a 10-minute and a 1-minute warning. When time is called, please stop typing/writing promptly and turn in your copy of this exam and your answers. Please do NOT leave your exam or bluebook (or typed answers) on the desk. All copies of this exam and bluebooks must be turned in to the person in charge, or if you finish early, must be taken to Exam Headquarters (Room 123).

Good luck. Have a great break between semesters!

Question One

Randy Rodeo World is a theme park that is devoted to cowboys and related themes. Its souvenir store sells ten-gallon hats, lassos, saddles, branding irons, and the like. It also includes a restaurant, which features a wide array of barbecued meat as well as numerous vegetarian choices, such as smoked tofu, barbecued veggie burgers, and the “cowboy salad” (lentils, carrots, beans, and hard boiled eggs).

The mascot of Randy Rodeo World is Randy Mouse, a cowboy hat-wearing rodent who vaguely resembles Mickey Mouse. There is a second important character featured at Randy Rodeo World, and it is Brad Bull.

As an introductory cartoon that is shown to visitors to Randy Rodeo World explains, Randy’s best friend is Brad Bull, a “wild and dangerous bull.” Pamphlets given out to all guests to Randy Rodeo World describe Randy as “a sweet and gentle cowboy mouse” and Brad as a “life-threatening monster.” Acme World Film Studio, the film company that owns Randy Rodeo World, has developed Brad as a very “edgy” character in hopes of attracting a teenage audience to its theme park and related products, such as animated films and video games about the adventures of Randy and Brad.

Just after the main entrance to Randy Rodeo World is “Brad Bull,” a mechanical bull that permits customers to experience a ride on a bucking bronco. Fans who are interested can also buy their own personal mechanical bull from the store. This product is called the “Brad Bull Home Edition.” It comes in two variants. There is the: (1) “Beginner Edition,” and the (2) “Dangerous Edition.”

Joe, Ellen, Susan, and a few of their friends visit Randy Rodeo World to celebrate Ellen’s birthday. They are all over 21 years old. Susan works at Randy Rodeo World as a product manager. They watch as ten other visitors give “Brad Bull” a try. Two visitors are successful and stay on the mechanical device for the full 90 seconds of the ride. Eight are thrown from the bull and land on the carpet surrounding the apparatus. One of these eight visitors appears to hurt her ankle; she leaves the immediate area around the mechanical bull and is noticeably limping.

Just then Ellen’s cellphone rings, and, after her phone call, she announces that she has been called away to the office to work on a business deal. Her friends are sorry that she has to leave. Before Ellen leaves, Susan uses her employee discount (10%) on behalf of all the friends to buy the Brad Bull Home Edition for Ellen. Everyone is to reimburse Susan later for their share of the gift. There is no discussion of which edition

of “Brad Bull Home Edition” to buy for Ellen, and somehow the “Dangerous Edition” of the ride is loaded into Ellen’s car.

At this moment, Joe exclaims, “The party must go on!” He wants to ride the Brad Bull mechanical ride. The other friends are losing interest in the theme park and decide to go home. Neither Ellen nor the other friends want to ride the mechanical bull. “The Brad Bull character seems kind of creepy,” one of the friends remarks in the parking lot.

After a long wait on line, Joe is eager to ride “Brad Bull.” When it is his turn, Joe gets on the mechanical bull, and, as it begins to sway and lurch, Joe holds on expertly and draws the attention of a crowd. Joe grew up in Houston, Texas and is old enough to remember the John Travolta film, *Urban Cowboy*, and to have enjoyed the resulting popularity of mechanical bulls in bars while he was in college. He has ridden more than a few mechanical bulls in his day, and even is wearing a University of Texas Longhorns t-shirt at Randy Rodeo World that day.

With each bucking cycle, however, the bull’s movement becomes more challenging and violent. Joe is thinking about letting go for his own safety, but a stranger in the crowd, Carter Monroe, begins to taunt him as a “No good Texan.” As a result, Joe decides to hang on “no matter what.” Despite his resolve, he is ultimately thrown from the bull. At precisely the moment that he sails through the air, Joe spots a child bystander, Sally Simpson, who has edged very close to the mechanical bull. Joe wrenches his body in the air to avoid the child and, as a result, lands awkwardly on the carpet. He suffers severe injury. Sally is not hurt. The child’s father, Ernie Simpson, tells Joe, “If you hadn’t moved your body in such a funny way, you still wouldn’t have hit Sally, and wouldn’t have hurt yourself so badly. Thanks for nothing.”

While Joe lies incapacitated at the hospital, Ellen arrives home from the office after spending a few hours moving her deal forward. Excited about her birthday gift, Ellen sets up the Brad Bull Home Edition in her carpeted living room. Ellen gets on the mechanical bull, and it begins to sway and lurch. As with Joe, Ellen too is ultimately thrown from the bull.

As a result of her being thrown by the bull, Ellen’s shoulder lands awkwardly on the carpet and is dislocated. As she rolls over after the initial injury, however, Ellen strikes a narrow and unstable table on which is perched an old heavy vintage Victrola. See Illustration A below. There is also a large heavy pile of old shellac 78’s, or vintage recordings on the table. See Illustration B below. The recordings are of famous blues artists and quite valuable. The Victrola and the 78’s fly off the table and smash into Ellen. The 78’s shatter, and the Victrola is broken. The impact leads to Ellen suffering serious head injuries.

Finally, Susan returns home, without any knowledge of these accidents, and decides to test her own Brad Bull home edition, which has been in her house for 48 hours. Her employer, Acme World Film Studio, has required all employees to test one or the other home edition. In some theme parks, it is customary to have employees test rides at the theme park. Building on that industry custom, Susan's manager, Thomas Probst, wants all employees to test the Home Edition of the mechanical bull. Susan was not thrilled about the assignment, but chose the "Beginner Edition" and brought it home. Unfortunately, she walks in the door that day and finds that her son Isaac, age 6 years, had just fallen off the ride and broken his elbow.

Assignment:

- (1) Discuss possible plaintiffs, their claims, and how any party sued is likely to respond.
- (2) Please pick at least two cases from the semester and discuss how the fact pattern above is similar or dissimilar to these cases. Does the above fact pattern illuminate or otherwise cast any of these cases in a different light?



Illustration A: A Victrola



Illustration B: A '78 Shellac Recording

Question Two

Ralph Rossnagel has four sheds on his property. There is a fence on the side of his property that faces a road. The part of his property that abuts a large wooded area is open. The large wooded area is part of an extensive public park owned by the county. There is an easily accessible playground in the public park, but it is located some distance from Ralph's property.

Ralph was walking on his property one day with his father, Wolfgang Rossnagel. Wolfgang suffers from Alzheimer's disease, which causes dementia in his case. Ralph and Wolfgang came to the vicinity of the sheds and saw six or seven boys on the roof of the first shed. The boys were all barefoot, and all were lighting firecrackers. They were throwing the firecrackers in the air. Ralph ordered the six or seven boys to get down, and they did so at once. He asked the boys to leave his premises at once. One of the boys, Ronald Asheton, age eight, put a firecracker in the shoe of an unsuspecting boy, James Williamson, age seven. James suffered burn injuries.

At the time of this incident between Ronald and James, Ralph and Wolfgang had already gone around to another shed. Ralph spotted two boys on the roof of the second shed. There were, however, actually *three* boys on the second shed roof, including Frank Thorne. Ralph claims that he did not see Frank Thorne on the roof of that shed. The proof is not very clear that he did, although some testimony was offered that suggested that Frank Thorne was within his sight.

Ralph ordered the boys to get down, and testimony was offered that the boys did start to get down at once. Before they succeeded in doing so, however, Wolfgang picked up a stick, which was two inches in width and about fourteen inches long, and threw it in direction of the boys. There was testimony tending to show it was thrown at one of the two boys in view of Ralph. The stick missed these two boys, but struck Frank Thorne and hit him in his upper thigh, which caused a deep gash.

Ralph noticed Frank's injury at once, and he loaded Frank into Ralph's car and began to drive to the local hospital, Deep Valley General Hospital. Wolfgang came along for the drive on the freeway.

On the way to the hospital, Frank began to scream at both Ralph and Wolfgang. He was in significant discomfort and, therefore, not his usual polite self. While not admitting any wrongdoing, Ralph expressed regret at Frank's injury. Frank then began to imitate Ralph's stuttering. For his entire life, Ralph has suffered from a speech impediment which causes him to stutter. He is extremely sensitive about his stutter and resents when people draw attention to it. For twenty minutes, Frank berated him about this aspect of his speech, told crude jokes about it, and cruelly ridiculed him.

Due to his increased nervousness, Ralph did not notice a silver automobile driving behind his car and attempting to pass it on the right side. Under the applicable motor vehicle code, it is not permitted to pass on the right side of cars on the freeway. Nonetheless, many drivers do so. Unfortunately, just as the automobile attempted to speed pass Ralph's car, Ralph turned around to scream at Frank and to tell him to stop making fun of his stutter and to do so immediately.

For some reason, as Ralph started to scream at Frank, his car swerved slightly to the right as the passing car attempted to pass him. An accident ensued in which the driver of the passing car, Suzanne Smith, suffered a broken leg. Suzanne Smith had been at a tavern before getting in her car. The bartender there later explained, "As long as she had money, I kept pouring her drinks."

In the emergency room, Dr. Tamar Weisman examined Frank's wounds. Before being called unexpectedly to the hospital, Dr. Weisman had been at a private social gathering. According to the host, Naomi Yang, "As long as she was thirsty, I kept pouring her drinks." The smell of alcohol on Dr. Weisman's breath flooded Frank Thorne with horrible childhood memories of being terrorized and beaten by other boy scouts when he was eleven years old and at Ten Mile River summer camp. The other boy scouts had stolen liquor from the scoutmaster, and Frank suddenly remembered that extremely traumatic event in his life. He felt just as traumatized at the hospital as he had on that terrible day in his past.

Assignment

- (1) Please discuss possible plaintiffs, their claims, and how any party sued is likely to respond.
- (2) As you consider your answer, do you find that the law treats negligent and intentional tortfeasors differently? Are these differences justified?