

Torts Section 1B
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The Armageddon
December 19, 2008
9:30-1:30

This final exam consists of four questions. Each question will be given equal weight in determining your final grade (subject to your decision for #4).

This is an open book and open note exam. You may use your casebook, class notes, casebook supplements, commercial outlines, commercial supplements, lucky charms, and any other printed or written materials you believe will be helpful in completing your answers.

You will be given four hours to complete this exam, and you may allocate your time among the questions as you see fit. There is no answer sheet for this exam. You may write/type as long or as short an answer as you believe is necessary to completely answer the test questions. If you need extra bluebooks, please quietly request them from the proctor. If you finish early, please submit your bluebooks or computer disks to the exam proctor and quietly exit the room.

If you perceive an ambiguity or error in any test question, please proceed to answer it, noting the ambiguity/error and making any reasonable assumptions you believe are necessary to answer the question. Please state these assumptions in your answer and provide your justification for the assumption.

Good luck and have a nice break.

1. In an effort to compete with the world champion Phillies, the New York Mets sign six-time Cy Young-winning pitcher, Roger Clementine to a one year contract for the 2009-2010 season. This signing came as a surprise since Clementine had been out of baseball since his September 16, 2007 start with the New York Yankees. Most commentators thought that Clementine's career was over after the "Mitchell Report," released in December 2007, alleged that Clementine had used anabolic steroids for at least the last decade of his career. Steroid use is banned by Major League Baseball because of its performance-enhancing effects and its long-term effects on both the physical (e.g., increased risk of heart disease, sterility, etc.) and mental health (e.g., paranoia, increased aggression, etc.) of the user. Clementine, reportedly, assured the Mets that, if he had used steroids in the past, he no longer used them. The Mets put into place a screening process more rigorous than required by Major League Baseball in which they test Clementine weekly for the presence of banned substances.

Clementine is scheduled to pitch the May 1, 2009 game against the Phillies. In the week leading up to the game, the Philadelphia sports radio station, 610 WIP, announces a contest, jointly sponsored by the Phillies organization, in which it will give season tickets to the fan that does the best job taunting Clementine. Throughout the week, WIP talk show hosts encourage listeners to make signs and develop chants mocking Clementine's steroid use. Morning show host Angelo Catalding goes so far as to announce that if any fan elicits a direct response from Clementine, that fan will be honored at the 2009 Wing Bowl.

Mac, Charlie, Dennis, Frank, and Dee purchase tickets for front row seats behind the Mets dugout on the third base line. They bring a variety of signs poking fun at Clementine. Throughout the first three innings, in which Clementine gives up four runs, the Mets pitcher is subjected to boos and ridicule from the Phillies fans, but Frank is louder and more obnoxious than most. In the fourth inning, Clementine gives up a grand slam to Ryan Howard. As he returns to the Met bench, Frank says to the others, "Watch this . . . I'm gonna get that guy to come after me, and I'll be ready for him with this sock full of D-batteries." Frank then proceeds to yell at Clementine, "Where's Mindy? Junior high?" in reference to Clementine's alleged affair with a then 15 year old Mindy McReady. Upon hearing this, Clementine fires the ball in his hand at Frank's head; however, he misses Frank and hits Justin Wolpers, a tenured Wharton professor, who was sitting directly behind Frank. The ball breaks Wolpers's skull. Frank falls over from an apparent heart attack.

Wolpers had been a rising star in the economics profession, noted for his creative law and economics research which led to many offers from other universities as well as opportunities to write for publications like the New York Times. In the wake of his injury, however, he stops writing altogether saying that he now has trouble thinking of good research ideas. Because he is tenured, he continues to receive his current Wharton pay indefinitely. His medical bills are covered by his UPenn health insurance.

Frank's medical bills are covered by Medicaid. He can no longer work in the bar he jointly owns with Mac, Charlie, Dennis, and Dee, but, as it turns out, he was never very helpful in the bar anyway. Instead, he now enjoys new-found celebrity in Philadelphia and signs a lucrative contract to host a WIP show with Charles Barkley.

1.a Wolpers comes to you and says, "I don't know if I have any legitimate legal claim here, and I'm not looking for a windfall, but I do want to see that the right thing, legally, happens." Outline all of Wolpers potential legal claims, noting their strengths and weaknesses along all of the relevant dimensions.

1.b Frank comes to you and says, "I gotta tell you, this is the best thing that ever happened to me. I think that if I bring a lawsuit, I can generate even more attention for my and Chuck's radio show. Let's sue everybody for everything." Outline all of Frank's legal claims, noting their strengths and weaknesses along all of the relevant dimensions.

1.c Outline the defenses for any of the potential defendants you identified in 1.a and 1.b.

2. Despite making over \$300 million over the course of his boxing career, Mike Tison is on the verge of bankruptcy. He is forced to sell all of his possessions, but he can't bear to give up his pet tiger. Boxing promoter Dan King agrees to let Tison live in one of his houses in Las Vegas. King rarely uses the house himself. Without explicitly telling King that he was going to bring his tiger with him (though King does know how much Tison loves that tiger and he never actually asks what Tison is bringing with him), Tison and the tiger move into the house. Later that evening, Tison decides to join Evander Holyfeld at a buffet on the strip. Before leaving, he places the tiger behind a make-shift fence constructed of kitchen chairs and says, "You be good, tiger, and maybe I'll bring one of Evander's ears back for you."

A few hours after Tison leaves, former football great Tang Simpson and an accomplice break into King's house. Simpson says to his accomplice, "It's not stealing since it's my

stuff. Go look for my Heisman trophy, while I go into the kitchen and make us a sandwich.” When Tang gets to the kitchen, the tiger leaps on him and chews off the arm Tang uses to sign the autographs he sells on e-bay. The tiger continues out the door Tang and his accomplice left open and walks over to the Seegfreed & Koy residence next door where it eats Seegfreed in front of Koy. Once Koy recovers from the initial shock, he is able to find a gun and shoot the tiger. Koy falls into a deep depression after witnessing the horrific death of his long term partner.

2.a Tang asks you to detail his legal options in this matter. Draft a memo discussing the legal issues involved in Tang’s predicament.

2.b Koy asks you to detail his legal options in this matter. Draft a memo discussing the legal issues involved.

2.c Provide a discussion of the defenses relevant to the claims identified in 2.a and 2.b.

3. A common tort reform that is suggested is the implementation of a cap on contingency fees for plaintiffs’ attorneys or even an outright ban on this method of compensation. Discuss the pros and cons of a reform like this along all the relevant dimensions of tort law.

4. Choose one question above (1, 2, or 3) to count double **or** choose to have each question count equally (i.e., each is worth 1/3 of your grade). Please clearly indicate your choice or you will automatically lose 25 percent of the possible points on the exam.