

Emory University  
School of Law

Torts  
Fall, 2007

Torts

Tuesday, Dec. 11,  
2007

Professor Zwier

2:00 - 6:00

PM

Instructions

This examination consists of two sections; one multiple choice section and one essay. The total time permitted for the exam is 4 hours. You will have 60 minutes for the multiple choice section. You will all take the multiple choice section during the first hour. Answer on the scantron answer sheet provided using a #2 pencil. Please turn in the multiple choice questions when time is called. Since multiple choice exams are particularly susceptible to honor code violations, please keep your eyes to your own papers. You should answer all questions. This is a closed book part of the exam.

The essay section consists of three essays; one 90, one 40, and one 20 minutes long. These time allocations indicate the weight which will be given each section. The essay portion is an open book exam, and you may use your book or any outline you prepared. NO Commercial outlines will be allowed in the exam.

In the essay section (Section II), if more than one examination booklet has been used to answer these questions, be sure your examination number appears on each booklet indicating the total number of booklets utilized by the individual number of each book. (E.g., #1 of 2, #2 of 2.) Remember to read the question carefully and answer only the question posed. Most points are allocated for analysis, so organize carefully to show this analysis. Your time and point allocations for the three essays are 90, 40 and 20, respectively. This means you will have 30 minutes of unallocated time for organizing and outlining. Please use at least a significant part of the time to organize yourself and make your answers precise and concise.

The only identification permitted to appear on the blue book is the examination number which has been assigned. Please do not indicate anything else on the blue books that will identify you. Before you begin working on the exam, check to see if you have pages 1 through 15. Section 1 - pages 2 through 15. Section 2 - pages 16 -17.

## Essay Question I. (90 points, 90 minutes)

During the finals of the Fed Cup Women's Tennis Championships between US and Australia, the crowd was unusually boisterous, with a lot of flag waving and chanting and singing. World Fed Cup Inc runs of the championship and owns the arena where the championship was held.

At one point, the crowd in the bleachers started to sway in unison, and suddenly, a part of a brand newly constructed overflow grandstand, set up by the World Fed Cup, Inc., started to groan and tremble. The crowd started to scream and try to jump from the stands. In panic, Amy Wilson, who was at her first tennis match, tried to jump from the top of the bleachers to a near by flag pole. She missed grabbing the pole and fell and broke her back.

After a delay for the ambulance, and a check of the bleachers the championship went on.

And in the end, on a remarkably cold day in January, Aussie, a female professional tennis player and Wimbledon champion, won the match and Australia won the Fed Cup.

The State of Gorgeous enacted a state statute entitled: "The Environmental Protection and Safety Act." One of the provisions of this act "prohibits the manufacture and sale of cans on which the flip top is able to become separated from the can."

Drink Bottling Company ("DBC") is located in the State of Gorgeous. DBC manufactures and distributes "Sports Drinks" in cans with flip tops. DBC supplied all the drinks to players at the Women's Fed Cup for free. After the match, Aussie was drinking a can of "Sports Drink" when the flip top separated from the can. All witnesses say it separated when Aussie simply lifted up on the tab. The tab fell into the can. Aussie looked in, then shrugged, and tilted up the can to drink. Aussie swallowed the flip top and began choking.

Norm, a coach of another pro, who was team mate on the Fed Cup team, rushed Aussie to the hospital, but on the way lost his cool. Though Aussie was obviously getting air, there was a raspy sound coming from her throat, Norm grabbed Aussie in bear hug and said, "I got to get this out. Ready?" and Aussie nodded. Norm then administered the Heimlich maneuver. Norm was able to dislodge the flip top but in his overzealousness he broke Aussie's ribs. The ribs punctured Aussie's lungs and she was rushed into the operating room for emergency surgery.

Sandy Surgeon attempted to repair Aussie's lungs and but half-way through the procedure, Aussie's heart stopped beating. Surgeon believed Aussie was about to die so she removed one of her kidneys to give it to another patient in the hospital who was waiting for a kidney transplant. Just as Surgeon finished the successful removal of the kidney, Aussie's heart began beating.

Aussie survived the surgery and her ribs and lungs have properly healed. However, she has permanent damage to her vocal chords from swallowing the flip top, which most likely occurred during the Heimlich maneuver. Due to the kidney removal, she is unable to engage in any strenuous activities and she can no longer compete on

the professional tennis circuit.

What are Amy's rights against World Fed Cup?

What are Aussie's rights against DBC in **negligence**?

**Essay Question II. (40 points, 40 minutes)**

Using the fact scenario in question 2, assume there was no statute. Assume that DBC chose a design using a different composition of aluminum, than that used by most aluminum can producers. The new design was a part of a green advertising campaign. The design was to minimally improve recycling properties of the can, but mainly to help DBC sell itself to the health market. While the new composition was not supposed to impair its strength, the product history was not sufficiently long for there to be much proof of this, or of how temperature and other conditions might affect the can's functionality. Discuss and compare the likely outcome to the Aussie's case if Gorgeous's design defect law follows

- (a) 402 (a) of the Restatement 2d of Torts,
- (b) Barker
- (c) the 3<sup>rd</sup> Restatement of Torts

Gorgeous is a modified comparative negligence jurisdiction. Include in your discussion consideration of the defenses that might apply, depending on the design defect law Gorgeous employs.

**Essay Question III. (20 points; 20 minutes)**

Please discuss the differential treatment of mental versus physical disturbance in tort law, for both plaintiffs and defendants. In what contexts are there differences? Does it matter if mental disturbance is temporary? Does it make a difference if mental disturbance is combined with a physical one, even a minimal one? Based upon the cases and materials we read, what are the policy reasons behind this differential treatment?