

Torts I
Final Exam Fall 1998

Write in the space provided. This is a closed book/notes/everything exam. Put your exam number in the upper right hand corner of each page of this exam.

1. Doug hates Mary and her little dog too. He takes a shot at Mary with his shotgun, but being a lousy shot, he kills her dog instead. What would his defenses be if Mary sues him for conversion for destroying her chattel?

2. When Jane does not take her medicine, she is crazy. Last week she quit taking her medicine because it makes her feel bad. While out driving in her car, she hallucinated that a pedestrian, Tom, was really a vicious dog about to attack a little girl. She ran Tom down to save the little girl. Tom sues her for battery. What are her defenses?

3. Same facts as question 2: What is Tom's prima facie case against Jane for negligence?

4. Sam is admitted to the hospital for severe abdominal pain. Surgeon Betty thinks he has appendicitis and tells Sam that he needs to have his appendix out as soon as possible. She does not tell him of any of the risks of the surgery, just that it needed to be done quickly. Sam has a stroke during surgery and is left paralyzed. Expert testimony establishes that this is a rare but unpreventable complication of the surgery. What is Sam's prima facie case for failure of informed consent and what difficult fact does he have to convince the jury of?

5. Same facts as question 4: what does plaintiff have to have an expert testify to in a state that uses the reasonable person standard for informed consent? What does the expert need to testify to in a community standard state? Which is Missouri?

6. Explain the legal issue in the T.J. Hooper case, how the court resolved it, and why it is an important issue in managed care (HMO) medical malpractice cases.

7. What are the facts of the flaming rat case, what legal issue did it pose, and how did the court resolve it?

8. Plaintiff is injured when a jar of Acme pickles explodes as he takes it off the grocery store shelf. He wants to sue Acme using only *res ipsa loquitur*. Using the elements of *res ipsa loquitur* from the Restatement, what does plaintiff need to prove to recover? Be specific as to the elements and how they related to the facts to be proven.

12. What duty did the court impose in Tarasoff and how is it modified by the County of Alameda case?

13. Your client was mugged in the common areas of a hotel. What would you have to show to hold the landlord liable?

14. What is the difference between wrongful birth and wrongful life?

15. Explain, with examples, Comment K and Comment I products, how they differ, and what manufacturers of them have to do to avoid liability.

25. "I do not like violence, but sometimes it just comes with the job," said Sam to Merv, the gunshop owner.

"I need a gun I can rely on, a mean one that will make'm think twice."

Sam liked Merv. He could always deliver at a good price. You just didn't want to worry too much about where the guns came from.

"I've got just what you need," croaked Merv.

"This is a special model, new and never been fired. Only a few others like it. It has a silencer built-in, and most of the parts are boron fiber so it does not show-up on x-ray. Winchester made them to test a new design, but never released them for general sale. One of their engineers kept them for souvenirs, and they just sort of showed up here one day."

"Looks like a show stopper. I'll take it," said Sam fatefully.

Through bad luck, Sam has just lost his best chance for a big time paying client. Putting aside his pride, he accepts a job from Worldwide Importers. Sam has resisted working for Worldwide because he is not sure what it does, but it involves the movement of large sums of money.

Worldwide moves this money very informally. As they explain it, using an armored car only draws attention to their business. They prefer the security of a low profile operation.

The job looked simple enough. The courier would pick up the money from Worldwide and deliver it to the captain of a ship in harbor. Sam would go along, just in case.

Things went smoothly until they got on board. They saw the body just as they entered the captain's cabin. Pulling his gun, Sam hustled the courier out of the cabin. They had just reached the gangplank when Sam was jumped from behind. Pulling himself free, he clubbed the thug with his gun.

As they started to run down the gangplank, they were confronted with four gorillas. Sam faced them down with his pistol. Just as they were about to clear the gangplank, the barrel fell off the gun.

The next thing Sam saw was the faces of two garbage men gazing down on him in the dumpster. The money was gone, the courier was dead, and Sam was seriously, but not permanently, injured.

Using the elements of 402a, what is Sam's prima facia case against Winchester? Assume that Sam is only claiming damages for being beat up and tossed in the dumpster. Make sure you are clear about what the elements are.

26. Using your answer from 25, what are Winchester's defenses to each element of the case?