

TORTS I
Summer 1998
July 10, 1998

PROFESSOR DEWOLF

MID-TERM EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS. THIS IS A CLOSED BOOK EXAM!

While you are waiting for the exam to begin, be sure that you have written the YOUR EXAM NUMBER and "TORTS—SUMMER '98—MIDTERM EXAM" on EACH bluebook, that you have read these instructions, and that you are otherwise ready to begin.

IMPORTANT: This exam will last THREE HOURS. You should plan on spending AT LEAST 20 minutes reading the questions carefully and outlining your answers on a separate sheet of paper. Before writing your answers, REREAD each question to be sure you haven't missed anything.

DOUBLE-SPACE your answers in the bluebook.

Use SEPARATE BLUEBOOKS for EACH QUESTION. Label each bluebook according to each question and, if necessary, book number, *e.g.*, "Question 1, Book 1"; "Question 1, Book 2"; "Question 2"; etc. When you are finished, turn to the back cover of the first bluebook, and place the second, third, fourth, etc. bluebook in order inside the end of the first bluebook, so the whole makes a single package. Then put it in the box at the front.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, `Andropov ("A") would be sued by Brezhnev ("B"), alleging that A would be liable to B ... !

In answering the questions, you are responsible for Chapters 1, 2 and 3A of the casebook. Please DO NOT DISCUSS ANY of the following ISSUES:

- Contributory negligence on the part of any plaintiff;
- Comparative fault as between defendants;
- Claims against governmental bodies;
- Any affirmative claims or defenses that would be raised by any defendant.

In other words, you should concentrate on the evaluation of the prima facie case that would be presented by your client(s) (if you represent plaintiff(s)) or against your client(s) (if you represent the defendant(s)).

Plan on spending at least 15 minutes at the end PROOFREADING your answers. You may not write ANOTHER WORD after time is called.

Each question has been assigned a point total, and the exam as a whole has a point total of **135**. Spend the amount of time on each question reflecting its relative worth.

You may KEEP your copy of the exam questions if you wish.

REMEMBER THE HONOR CODE! Don't identify yourself.

DOUBLE SPACE!

DOUBLE SPACE!

DOUBLE SPACE!

GOOD LUCK!!!

QUESTION 1 (75 points)

Lever Brothers, a company that sells soap and other household products, operated a manufacturing plant in Hammond, West York. Pursuant to a wastewater discharge permit, Lever Brothers discharged its accumulated waste into the Hammond public sewer system and paid the City for treatment. On the average, Lever Brothers discharged approximately one million gallons of effluent daily into the City's sewer system.

Tharon Langdoc, a flight attendant, is a tenant of a duplex which is located directly east of the Lever Brothers plant. On April 19, 1997, Langdoc returned home from a trip and noticed that her shower basin was draining slowly. Langdoc also observed water backing up from the floor drain in her basement and this backup caused a six foot wet area around the drain. Langdoc notified her landlord, Caroline Pavlovich ("Pavlovich"), who contacted the Hammond Sanitary District. A sanitation employee inspected the premises and determined that the blockage was not caused by the City. On April 22, 1997, Langdoc called a plumber who unplugged the drain by rodding out a white, lard-like, fatty substance. Lever Brothers paid for the plumber's services.

On June 7, 1997, heavy rainstorms and a subsequent power failure caused flooding in over six hundred basements of homes located near Lever Brothers' plant. Langdoc's basement was flooded and a watermark on the wall indicated a water backup of approximately eight to twelve inches. Langdoc noticed a foul odor in her basement and observed that the floor and many of her personal belongings were covered with a white, fatty substance identical to the substance that was extracted from her drain in April 1997. Much of Langdoc's belongings were unsalvageable as a result of this substance. Included in her lost belongings was a shawl that she inherited from her great grandmother, who died in a Nazi concentration camp. The shawl was the only thing that survived the camp. Langdoc had a dream recently in which her great grandmother was sliding down the drain and Langdoc in her dreams was reaching out to her but she slipped away. She is seeing a psychologist who has diagnosed her with mild depression but hasn't prescribed any medication yet.

Please analyze whether Langdoc can recover for her injuries, and if so, what she can expect in the way of damages.

QUESTION 2 (60 points)

AALAR, a West York corporation, is in the business of renting automobiles to the public. In Baileyville, AALAR does business as Baileyville Rent-A-Car; in Appletown it does business as Appletown Rent-a-car. After one of AALAR's automobiles was stolen from one of its Appletown branches in November 1995, the manager of that branch, Pandora Evans, reported the theft to the Appletown Police Department. In accordance with standard procedure, the Appletown Police Department listed the automobile on the National Crime Information Center ("NCIC") computer as a stolen vehicle. Evans was aware that this listing would be made. The stolen automobile was later discovered abandoned in Huntsville, Alabama. After being notified that the automobile had been located, Evans contacted AALAR's Baileyville area manager, Bill Moore, and requested that someone from one of the Baileyville branches retrieve the automobile. Moore had the automobile

brought to Baileyville on or about November 27, 1995, where it was serviced and immediately placed back into the rental pool at one of the Baileyville branches. Both Moore and Evans were aware that the automobile's listing on the NCIC computer needed to be removed, and they both made several attempts to have that done. Moore contacted the Baileyville Police Department and was informed by a representative of that department that the Appletown Police Department would have to remove the listing. Moore relayed this information to Evans and asked her to handle the matter in Appletown. Evans contacted the Appletown Police Department and was told that it would not remove the listing until someone with that department had actually seen the automobile and had prepared a recovery report. Evans relayed this information to Moore. Although each of them had had success in the past in removing various NCIC listings by telephone, both Moore and Evans were aware that the automobile's listing would not be removed from the NCIC computer until the automobile was brought to the Appletown Police Department for proper processing. The evidence suggests that Moore and Evans each thought the other was handling the matter and that after a while the matter just "slipped through the cracks," as Moore put it. However, although he had no reason to think the proper steps had been taken to remove the listing from the NCIC computer, having received no confirmation from a police department or from Evans that the listing had been removed, Moore immediately rented the automobile; he continued to rent it and rented it numerous times until April 1, 1996, when he rented it to F.N. Francis. Both F.N. Francis and C.J. Francis are listed on the rental contract as authorized drivers of the automobile. Evans was not aware that Moore had begun renting the automobile while it was still listed on the NCIC computer.

At approximately 1:00 a.m. on April 2, 1996, the automobile caught the attention of a police officer with the City of Trussville, when the officer observed the driver of the automobile, whom he knew to be C.J. Francis, remain longer than he thought was normal at a stop sign. The officer had the automobile's tag number checked on the NCIC computer. Because he knew where C.J. Francis lived, the officer did not follow him. When the officer later learned that the automobile he had seen was listed as stolen, he and several other police officers went to F.N. Francis's house, at approximately 3:00 a.m., and demanded entry to question her son, C.J. Francis. The officers remained in the house for 15 to 20 minutes; however, they stayed on the street in front of the house for several hours waiting on a truck to come and tow the automobile away. At one point while the officers were inside the house questioning the plaintiffs, C.J. Francis went outside to retrieve the rental papers from the glove compartment of the automobile. When he did this, an officer who had been assigned to secure and watch the automobile, being unsure of C.J. Francis's intentions, momentarily pulled his gun. Neither C.J. Francis nor F.N. Francis suffered any physical injury and neither was charged with a crime.

Your law firm represents AALAR. Please analyze the potential exposure you face as a result of the above incidents.