

Exam # _____

Professor DeWolf
Torts

Fall 2009
October 5, 2009

MID-TERM EXAM

Instructions

DO NOT GO BEYOND THIS PAGE UNTIL THE EXAM ACTUALLY BEGINS.

FOLLOW the instructions of the proctor for initiating the ExamSoft software. If you are using a BLUEBOOK instead of ExamSoft, be sure that you have written your exam number on the bluebook(s) and that you are otherwise ready to begin.

This exam will last 60 minutes. Plan on spending at least 10 MINUTES reading the question and outlining your answer. REREAD the question to be sure you haven't missed anything.

Please discuss only the kinds of issues that would be raised as a result of what you have learned through Chapter 3A. Please **OMIT** from your analysis any discussion of issues that are covered beyond that point; DO NOT discuss, for example, governmental immunity, multi-party liability, comparative fault, or any other issue other than the issues we have already covered in class.

You are welcome to use abbreviations, but indicate what they are, *e.g.*, "Andropov (A) would sue Brezhnev (B). B would be liable to A if"

Plan on spending at least 10 minutes at the end **PROOFREADING** your answers. You may not write **ANOTHER WORD** after time is called.

REMEMBER THE HONOR CODE: DO NOT IDENTIFY YOURSELF

GOOD LUCK!

Question

Westwood Construction employed two carpenters, Chad Morgan and Dana Gaither, who assisted in the construction of a downtown office building. Morgan and Gaither had previously been suspended by Westwood for a week after an argument with a group of electricians on the jobsite erupted into a fistfight. The construction project was behind schedule when a supervisor ordered Morgan and Gaither to pick up a load of roof trusses with the company truck.

At approximately 1:30 a.m. Morgan and Gaither were returning to the jobsite with a load of roof trusses when they stopped in the lefthand lane at a stoplight. Laura Vetter, driving a Chrysler Town and Country minivan, pulled up in the right hand lane next to Morgan and Gaither. Morgan began screaming vile and threatening obscenities at Vetter, shaking his fist, and making obscene gestures in a violent manner. According to Vetter, Gaither revved the engine of the truck and moved the truck back and forth while Morgan was threatening Vetter. Vetter claims that Morgan threatened to remove her from her van and spat on her van door when the traffic light turned green. Vetter stated she was very frightened and thought Morgan was under the influence of drugs or alcohol. She was able to write down the license tag number of the car. Morgan stated he did not intend to scare, upset, or harm Vetter, but "didn't really care" how she felt. He was trying to amuse his friend, who was laughing at his antics.

When the traffic light changed to green, both vehicles drove forward. According to Vetter, after they had driven approximately 10 feet, Gaither veered the truck suddenly into her lane, and she reacted by steering her van sharply to the right. Vetter's van struck the curb, causing her head to hit the steering wheel and snap back against the seat, after which she fell to the floor of the van. The collision was painful, but fortunately resulted in no physical signs such as a bruise or a laceration.

Vetter has now filed suit against Westwood, claiming damages for her emotional distress. Although Morgan and Gaither have said their only intent was to amuse one another, and they deny any intent to frighten or harm Vetter, she claims that as a result of the incident she was "very, very frightened." You are an associate with the firm that represents Westwood. Please evaluate the claim.