

**LAW 7115-03, TORTS II**

**MID-TERM EXAMINATION, SPRING 2010**

**Prof. Tom W. Bell**

Wednesday, March 10, 2010, 10:25 a.m. to 11:40 a.m.

Please write your exam number here: \_\_\_\_\_ and turn in this exam with your answers. If you fail to turn in your exam you may forfeit some or all of your grade.

This exam consists of 10 multiple-choice questions and one essay question. The multiple-choice section is closed book and counts for 3/8ths of your grade for this exam. You have 18 minutes to complete the multiple-choice section, or an average of 1.8 minutes per question. Indicate the one best answer to each multiple-choice question by filling in your Scantron sheet as directed.

The essay section is partial open book. You may use your casebook, any material that I handed out for class, and any notes that you or your study group prepared. You may not use other materials, such as nutshells or commercial outlines. The essay section counts for 5/8ths of your grade for this exam. You have 30 minutes to complete it. Before you begin writing any essay answer I suggest that you: 1) read the question carefully; 2) think about exactly which issues you need to address; and 3) outline your answer. Good organization and good analysis almost always go hand-in-hand.

Write on only one side of each page, on every other line. If you use more than one bluebook, please number the booklets so that I can easily follow their intended sequence. Please write as clearly as possible. I cannot grade what I cannot understand.

Unless otherwise indicated, all events described below take place in a generic common law jurisdiction.

If you have any procedural questions about taking this exam, please contact the Registrar. If you think it necessary to assume an unstated fact in order to answer a question you may do so, but you should clearly indicate that you are making an assumption and briefly explain why you consider it reasonable to do so.

Do not turn the page until told to begin the exam.

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**Multiple Choice Questions**

3/8ths of exam's total grade  
(maximum time: 18 minutes, or 1.8 minutes/question)

[redacted]

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### **Essay Question**

5/8th of exam's total grade  
(maximum time: 30 minutes)

Debbie kept her horse, Bucky, on her property in California's Central Valley. As the horse's name suggested, Bucky had a tendency to rear and kick when agitated. For that reason, Debbie kept Bucky behind a barbed-wire fence that reached a foot higher above the ground than required by local law.

One winter, unusually heavy rains struck the area. For the first time in recorded history, an arroyo passing across Debbie's property flooded. In so doing, it washed away some of the fencing that normally enclosed Bucky's pasture. He escaped onto the property of Debbie's neighbor, Carl, and began trotting along the edge of an irrigation ditch. One of Carl's field hands spotted Bucky, slowly approached, and then suddenly tried to lasso the horse. Bucky reacted by wildly spinning, bucking, and kicking. The field hand ran away in terror, thus escaping injury.

In the course of his panic, however, Bucky kicked a valve on one of the gates that controlled the flow of water from the irrigation ditch into adjoining fields. Because the valve, manufactured by Valveco, had been constructed of a metal alloy weakened by impurities, it shattered when struck by Bucky's hoof. The irrigation gate sprung open, allowing the rain-swollen waters of the irrigation ditch to spill out.

The water from the irrigation ditch on Carl's property flowed onto the fields of an adjoining farm owned by Plumsweet, Inc. It there flooded an orchard of mature plum trees, then in blossom, drowning their roots to fatal effect. Plumsweet later calculated that it would cost \$30,000 to replace the trees, which had about a decade of production ahead of them. Plumsweet also calculated that, had the trees lived long enough to produce a crop some months later, it would have enjoyed record profits of \$70,000, thanks to a plum shortage that arose later in the season, due to an infestation of mites. Normally, Plumsweet would have earned only \$40,000 from killed trees.

Plumsweet brought a tort suit against Carl, who in turn brought suit against Valveco and Debbie. Discuss the rights and remedies of the parties under tort law.