Torts
Professor Griffin
Three Essays

May 11, 2000
Spring 2000
3 1/2 Hours

CLOSED BOOK

THE EXAMINATION RULES AS STATED IN THE CURRENT STUDENT HANDBOOK GOVERN THIS EXAMINATION

INSTRUCTIONS

The examination is closed book. You may not consult any materials or another person.

The examination consists of three essay questions, all of which you should answer. Questions I and II are worth 40 points each. You should spend 70 minutes on Question I and 70 minutes on Question II. Question III is worth 20 points; you should spend 40 minutes on it.

If you believe you need to know more information about a case in order to resolve an issue raised by the facts given, tell me what you need to know and how it would affect your legal analysis. But do not add facts to create new issues. Be sure to address all issues raised by the facts even if you think a single issue is dispositive of the case.

Read carefully. Think before you write. ACCURATE READING OF THE QUESTION IS ESSENTIAL. Good organization, clear statement and avoidance of irrelevancies all count in your favor.

If you write your exam, use ONE SIDE of a page only, and SKIP LINES. If you type, DOUBLE SPACE, and leave wide margins.

Good luck, and enjoy your summer. See you in the fall.
Question I
(70 Minutes; 40 points)

Broadcasting Company aired a four-hour, two-night mini-series telling the story of the Singers, a famous '60s rock group, as told by a founding member of the group, Otis. The mini-series relates the story of the Singers from their beginning as a singing group until the present time. It is based upon a novel written by Otis, and told from his perspective. It details portions of the lives of the original members of the Singers (Otis, Mo, Larry and Curly), as well as other people who were involved in either family or business relations with the Singers. The mini-series includes depictions of Otis' first Wife and the Singers' Agent. Mo died several years ago.

Broadcasting Company promoted the mini-series on TV with ads that showed clips from the movie that depicted Mo, Wife, and Agent. Broadcasting Company used the same clips in order to promote sales of the videocassette of the mini-series.

The program portrayed Wife, who met Otis in high school, and became pregnant with Otis' child before they were married. During the time they were married, and after the divorce, Otis spent much more time on the road touring with the Singers than at home with his child. One subplot of the mini-series included Otis' struggle to balance his career and his family life. However, the mini-series portrayed Otis as having more contact with Wife and their son than he in fact had. Moreover, Wife was not spending a lot of time with Otis because she was dating someone else at the time that the mini-series showed she was spending time with Otis.

In another scene, Agent was shown driving up to the Singers in a brand new Cadillac with the words "Otis and the Singers" painted on the side. Agent produces a large roll of money and intimates that the money represents amounts earned by the Singers through their performances. When the members of the group ask to be paid, however, disagreement surfaces, and the conversation, as well as the relationship between Agent and the Singers, is depicted as ending with Agent placing all of the money in his pocket and driving away in the Cadillac. Agent contends that this incident never occurred.

Florence was not Mo's biological mother, but she raised Mo. She was not depicted in the mini-series. The actor who portrayed Mo had this line: "My Mom owed some pimp some money. Instead of paying him she gave me to him."

Mo's estate, Larry, Curly, Wife and Agent were not compensated for use of their life-stories in the movie and did not consent to the depiction of their lives in the series.

Discuss possible tort suits by Mo's estate, Florence, Wife and Agent against Broadcasting Company and Otis.
Question II  
(70 Minutes; 40 points) 

Paul owns a commercial logging business. Dealer distributes various lines of construction equipment. Paul asked Dealer to help him to find a delimber, which removes the limbs from felled trees and cuts the trees to certain log specifications. Dealer’s representatives took Paul to a logging site to view a delimber in operation. Paul saw a Model PP-453 delimber, manufactured by Delimbo, mounted onto a Swan excavator Model 888. It is undisputed that all delimers have to be mounted onto some motorized carrying equipment, such as the Swan excavator. The purpose of a Swan excavator is to dig dirt, thus, in order to convert the excavator into a delimber, the boom, arm and bucket of the excavator, which are used for digging, must first be removed and then a delimber is attached.

Paul ordered from Dealer a Swan excavator 888 and a Delimbo PP-453 delimber. The excavator was shipped to Dealer, who removed its boom, arm and bucket. Dealer then shipped the excavator to Delimbo, and Delimbo attached its delimber to the excavator. In the course of installing its delimber onto the Swan excavator, Delimbo modified the equipment by adding a catwalk, installing heavy duty guarding underneath the machine, and adding additional ventilation. Following this conversion, Delimbo shipped the machine to Dealer.

Paul went to Dealer, signed (along with Dealer) the purchase order, and took home the delimber. The front side of the purchase order identified the equipment as a "Swan 888 excavator assembled with a Delimbo Model PP-453 delimber," and charged $250,000 for the completed unit. The back of the purchase order included the following disclaimer, which appears under the header in boldface, capital letters:

NO IMPLIED WARRANTY OR OTHER REPRESENTATION.

Where permitted by law, neither Swan nor any company affiliated with it makes any warranties, representations or promises, express or implied, as to the quality, performance, or freedom from defect of its products, other than those set forth on this page, and NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS IS MADE.

Ten months later, while delimbing trees in the Big Horn National Forest, the delimber caught and was destroyed by fire. The parties dispute the cause of the fire. Paul alleges that the fire was caused by defective wiring in the excavator. Swan claims that the fire was caused by an improper installation of the delimber unit.

A spark from the fire landed on Camper’s tent. Camper’s legs were burned and his tent and sleeping bag destroyed.

Discuss Paul’s and Camper’s possible tort suits against Dealer, Delimbo and Swan. (Do not discuss contracts issues except to the extent that we studied them in torts class.)
Law Student decided to split his first summer of law school into two summer jobs. The first is with the United States Supreme Court; the second is with the State Legislature.

By coincidence, Law Student discovers that he is working on the same subject in both jobs. Both legislators and justices are worried about the law of defamation and false light. Accordingly, Law Student must write two memos, one for each employer. Each memorandum must discuss whether the law of defamation and false light needs reform, and if so, how. The memoranda should at least identify any problems or confusion in the development of constitutional or common law doctrine regarding these torts, and suggest possible judicial and legislative solutions.

Assume for purposes of this question that Law Student faces no ethical conflicts in tackling the same subject in two jobs.