Final Examination
Torts II, Professor Leslie Griffin
University of Houston Law Center
April 30, 2003
1-3:45 P.M.

THESE EXAMINATION QUESTIONS MUST BE RETURNED AT THE END OF THE EXAM

This examination is CLOSED BOOK and NO NOTES. You may not consult any other materials or communicate with any other person. You are bound by the Law Center’s Honor Code. Don’t forget that it is a violation of the Honor Code to discuss the exam’s contents with any student in this class who has not yet taken it.

Write your examination number in the blank on the top of this page. If you are handwriting your examination, write your examination number on the cover of each of your bluebooks. If you are using the computer, write your examination number on each diskette and at the beginning of your response to each question. At the end of the exam, you MUST turn in the examination along with your answers. Please do not write your name, social security number or any other information that provides me with your identity.

This exam is four pages long, with THREE questions. Question I is worth 35 points. Question II is worth 15 points. Question III is worth 50 points. You have two hours and forty-five minutes. I recommend that you spend 45 minutes on Question I, 15 minutes on Question II and 60 minutes on Question III. You have an extra 45 minutes to use at your discretion.

Your job is to analyze the facts in each question. Do not make up facts or fight the facts given. If you need more information to resolve a difficult question, state what information you would need and how it would affect your answer. 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.

Honor Code. It is a violation to use ANY aid in connection with this examination; to fail to report any such conduct on the part of any other student that you observe; to retain, copy, or otherwise memorialize any portion of the examination; or to discuss its contents with any student in this class who has not yet taken it. By placing your exam number in the PLEDGE blank below, you are representing that you have or will comply with these requirements. If for any reason you cannot truthfully make that pledge, notify me as soon as possible.

PLEDGE: ___________________________________
Oklahoma City TV news station KNEWS ran a series of news reports on the dangers of terrorism and terrorists post 9/11. As part of the series, it ran a retrospective on the 1995 bombing of the Federal Building in Oklahoma City. The news reports contained various comments about the bombing and displayed a photograph of an Iraqi man who had been living in Oklahoma City since November 1994. The reports said that the unidentified man in the photograph was the notorious John Doe #2. In 1995, John Doe #2 was sought by authorities for his alleged participation in the 1995 bombing. The name of the man in the picture was never revealed by KNEWS, and the station used digital technology to blur the picture of his face.

The reporters on the show mentioned the information that the police and FBI had collected in 1995 that tended to connect the unidentified man to the bombing. For example, John Doe #2 had been seen near the car rental agency where the car used in the bombing was rented. The police eventually determined that no John Doe #2 existed and that John Doe #1 had done the Oklahoma City bombing all by himself.

KNEWS also ran the story on its Internet station, KNEWS.com. The same picture was posted on the web site. Below the picture was text that stated: “TERROR AND TERRORISTS. Be sure to watch our four-part terrorism series at 7 P.M. and 11 P.M. Monday nights.”

Ann and Adam, two relatives of bombing victims, copied KNEWS.com’s picture and text onto their web site. They also distributed flyers with the picture and announcement in local restaurants.

Sam picked up a flyer when he went out for breakfast Monday morning and watched the show Monday night. Sam was unquestionably the unidentified man discussed in KNEWS's news reports. He and his wife could tell that the picture was the same as the one on his passport. They discussed what they should do. Following KNEWS's first two broadcasts, Sam contacted other media outlets, voluntarily allowing his name and face to be broadcast on two other television stations and then also voluntarily identifying himself as the person in KNEWS's news reports.

Sam comes to you for advice about what tort lawsuits he can file against KNEWS and Ann and Adam. Discuss the possible lawsuits and whether Sam will win them. [Oklahoma is a standard common law jurisdiction. We did not study Oklahoma law and there are no Oklahoma cases that you should try to remember.]
Question II

(15 points, 15 minutes)

Polly was 16 years old and an employee at the Restaurant where she worked part-time as a cashier. On Sunday, she began work at 11:00 a.m. at the cash register for the drive-through window. Mary Manager was also working the 11:00 a.m. shift on that day. Mary’s duties as assistant shift manager included counting the money from the cash registers. At approximately 2:00 p.m., Mary removed the money from the drive-through-window cash register and took it to the office and proceeded to count it. After counting the money, Mary thought that the cash register from the drive-through window was $50 short.

It was Mary Manager’s duty to conduct an investigation into the apparently missing money. She went back to the front of the Restaurant to look for the money, and she asked Polly if there had been any mistakes at her register or if anyone else had been in the office. Polly and Mary were the only employees who had access to the drive-through-window cash register during the 11 a.m. shift.

Mary telephoned the police and asked what the police could do to help locate the missing money. When Police Officer arrived at the Restaurant, he asked Polly if she would consent to a search. When she said “no,” he told her that she was making a mistake. Mary told Polly that Polly could lose her job at Restaurant for failing to cooperate with the police. Polly complied. She had to wait 45 minutes in the back Restaurant office until a female police officer could be found to conduct the search.

Restaurant and the Police never found the missing money.

Does Polly have a tort lawsuit against Mary? Explain why or why not. DO NOT DISCUSS DEFAMATION.
The Smiths and the Joneses moved into a new neighborhood, where they became friends quickly until their friendship declined. They argued about their dogs. In August, Mr. and Mrs. Smith were outside their house planting bushes when their dog “Mouse” was attacked by the Joneses’ dog, "Bear." Bear continued to run loose in the neighborhood. In late September, Mrs. Smith was in her driveway preparing to take her children somewhere when Bear appeared and began acting aggressively toward her ("hunkered down" in a "crouch" and "growling"). When she went down the street to the Joneses’ house to complain, Mrs. Jones slammed the door in her face. On October 15, when Mrs. Smith walked her dog Mouse past the Joneses’ house, Mrs. Jones stepped outside and yelled at Bear to "go up there and get them." Bear went running down the street toward Mrs. Smith and then swerved to chase a cat. On October 18, Mrs. Smith was walking her dog in the neighborhood when Mrs. Jones drove up behind her in her big SUV and came to a screeching halt behind her, yelling obscenities out the car window.

In November, Mr. and Mrs. Smith, using a police scanner inside their home, overheard part of a conversation over a cordless telephone between Mrs. Jones and Mr. Jones (who was at work). During the lengthy, two-hour conversation, the Joneses talked about their hatred of the Smiths. They made jokes about the Smith’s “mousy little dog” and how scared he was of Bear. They also said that they thought it would be “easy to drive the Smiths out of the neighborhood.” They laughed about how Mrs. Smith always jumped whenever the SUV drove near her.

The Smiths recorded the conversation. The next morning, Mrs. Smith contacted the police and reported that she had been sitting in her vehicle on the side of the street earlier that morning when Mrs. Jones drove directly at her at a high rate of speed, but swerved to avoid her at the last minute. A sheriff’s deputy was dispatched to the neighborhood to investigate. Mrs. Smith gave the officer a copy of the tape of the phone conversation. The officer reviewed the tape and then brought the Joneses down to the station house for questioning.

The Smiths also gave a copy of their recording to the local radio station, who broadcast excerpts of the Joneses’ conversation. They played the parts in which the Joneses talked about their hatred of the Smiths, Bear and their desire to drive the Smiths out of the neighborhood.

Identify and discuss the Smiths and Joneses’ possible tort lawsuits against each other. Will they win or lose?
Torts II Exam  
Professor Griffin  
Spring 2003

Your letter grades were awarded according to the Law Center's grading curve. The letter grades were based on the following point totals on the exam:

7   A  (80–85)  
11  A-  (76–79)  
20  B+  (70–75)  
23  B  (65–69)  
10  B-  (60–64)  
7   C+  (56–59)  
6   C  (48–55)  

Everybody realized that Question I was about defamation. Points were awarded based on how good your analysis of the defamation cases was. Very good answers mentioned the Khawar case. Many of you lost points by missing the appropriation issue on the website. Some of you spent so much time on KNEWS that you forgot to sue Ann and Adam, and lost a lot of points.

Question II was an easy question. It was primarily about false imprisonment, although you could have considered false arrest and malicious prosecution. Because the question was so straightforward, you needed to do a good job in the analysis of false imprisonment. This meant that you HAD to discuss the case law, especially the Donuts case.

In Question III, you should have spotted assault, intrusion and IIED. Most of you spotted the assaults. For intrusion, you should have talked about eavesdropping and wiretapping and included the case law. Some of you lost a lot of points when you talked about elements only, with no case law. Finally, you should have considered IIED for five points.

I will be away from the office all summer. But your exams are there for review. You may pick them up from my assistant Michelle Ozuna. Please be sure to sign out your exam so that we have a record of it. You are welcome to take your plastic bag and keep it, i.e., to keep your answer and the exam. I will check e-mail over the summer if you have questions for me; lgriffin@uh.edu. Or you can schedule an appointment after I return on August 22.
Michelle will also have copies of the best student answers if you want to look at them.