

It is understood by the student whose Student Number is entered below that this examination is given and the student's response is made and submitted pursuant to the conditions of the Honor Code.

Student Exam No. _____

UNIVERSITY OF MISSOURI-KANSAS CITY
SCHOOL OF LAW

Law #513
Defamation, Privacy, Relational & Emotional Torts

Professor Levit
Winter Semester, 2003

FINAL EXAMINATION
(3 hours)

Instructions

1. Read each question carefully and pay close attention to the facts and to what the question is asking you to do. Discuss all issues presented by a question. Remember to argue issues both ways. Do not engage in a discussion of issues not raised.
2. I have included all of the facts I think you will need to answer the questions. If a necessary fact is missing, please identify it in your answer and explain how it affects your conclusion.
3. Nothing is intentionally ambiguous. If anything about a question appears to be ambiguous, decide what you think is meant, tell me what you think is meant, and answer the question accordingly. No reasonable resolution of an ambiguity will be penalized.
4. Please write legibly, because I can only give credit if I understand what you write. I can also only give credit for answers that are written in the bluebook.
5. Think before you write. Organize your answer. You get extra points for clarity and succinctness. You are penalized for an answer which is disorganized and confusing.
6. **Materials that may be used during examination: None. This is a closed book examination.** Unless otherwise specified, the applicable law is the law of this State, the State of Grace, which consists of all cases in your casebook and any cases discussed in class.
7. This exam consists of 12 pages. **TURN IN THIS EXAMINATION WITH YOUR BLUE BOOKS.** It is an Honor Code Violation to fail to turn in the examination itself or to copy it in whole or in part.

Good luck!

DIRECTIONS: Write the letter of the single best answer in your Blue Books.

Multiple Choice

(25%)

Essay Question 1

(50%)

On December 2, 2000, Mary Bowman gave birth to a daughter, Amelia, at the University of Grace Hospital, a state teaching hospital. At the time of Amelia's birth, two researchers associated with the Hospital were conducting a cystic fibrosis research project. Elias Hampton and Rowena Harrier were pediatric endocrinologists and professors on the University of Grace Medical School faculty who also taught in a medical residency program at the Hospital. They received faculty salaries from the University plus extra compensation from the Hospital for their teaching and on-call hours. Hampton and Harrier developed a study that used excess blood that was drawn from all newborns born at the Hospital and tested it for the enzymes indicative of cystic fibrosis. This blood was drawn from all babies born at the Hospital to conduct statutorily required tests for the presence of other congenital and metabolic disorders.

The protocol for Hampton and Harrier's study mandated that the parents of half of the babies studies were informed if their child tested positive for indicators of cystic fibrosis. The researchers gave these parents a nutritional plan, since Hampton and Harrier were testing the hypothesis that early intervention with nutrition before children with CF developed symptoms would slow the progress of the disease. The other half of the tested newborns who showed positive indicators were placed in a "blinded control" group. Their doctors and parents were not told that their blood showed positive indicators of CF. Amelia was placed in the blinded control group and her parents were not told that she had tested positive.

All parents of babies born at the Hospital were given a pamphlet describing the research project as well as the required tests that would be run on the newborns' blood. The pamphlet explained the process for the project, said that no additional blood would be drawn from the babies, described the hazards of CF, explained the genetic nature of the disorder, and gave parents the option not to have their babies' excess blood used for this research project by signing a "Do Not Consent" form and turning it into the Hospital. Mary and her husband, Charles, both remember reading the pamphlet, but they did not sign this form or turn it in to the Hospital.

During her first year, Amelia did not gain weight well and had numerous upper respiratory infections. Finally, when Amelia was sixteen months old, her pediatrician had her tested for CF and the tests came back positive. By the time the Bowmans learned that Amelia had CF, Mary was pregnant with a second baby. Their second child, Charlie, was born in September of 2002. He also has cystic fibrosis.

The Bowmans want to file a lawsuit against Hampton and Harrier, the University of Grace Medical School, and the University of Grace Hospital. They do not want to sue their pediatrician or anyone else.

DIRECTIONS: (1) Evaluate this situation using only tort theories we have covered this semester; (2) Develop **only those claims in which the Bowmans or either of their children are plaintiffs**; (3) Caption each tort; (4) Sue only parties or entities who have been named in the facts; (5) Be sure to include possible defenses or responses that the defendants might raise.

Essay Question 2
(25%)

Beginning in 1994, Geraldine Patterson worked on the staff in the human resources department at Prints, a large communications and printing company. In 1999, she was promoted to the position of human resources manager, where she principally supervised and scheduled workers for various shifts at the plant. In the summer of 2001, Patterson's supervisor, LeDaria Skinner, began to address concerns she had about Patterson's work performance, including scheduling errors, excess approval of overtime work and vacation days, and resultant staffing shortages. Patterson also turned in performance evaluations for all 117 employees under her, rating each of them as "exceptional," the highest category of ranking. In addition, Patterson was repeatedly late to work over the course of a number of months. Skinner discussed these concerns with Patterson several times during 2001 and 2002. Patterson responded that her own performance ratings, based in large part on forms filled out by the workers she supervised, had up to this point always been "exceptional."

One incident occurred in the summer of 2002, where Skinner noticed a staff shortage and spoke sharply to Patterson in the break room, where a handful of workers were taking their break, stating, "You need to get coverage for this floor and for the presses. We have had production delays twice this month because of a shortage of workers. If you would arrive on time you would be able to handle the absences and arrange for substitutes and temps. Of course, you're not even recognizing the problem, since you are perpetually late to work."

Skinner reported these concerns about Patterson's administrative abilities to one of the directors of Prints, Diego Castelan. Skinner also suggested that Patterson was unsuited for management and inquired whether there was any suitable alternative position for her. Later that same day, Patterson went to Castelan to complain that Skinner was "watching her like a hawk" and she thought Skinner was singling her out for unfair treatment. She wrote an e-mail to several co-workers saying she thought Skinner was trying to get her fired because she had been involved in an attempt in early spring to organize the workers in her department in a labor union. At the end of that week, after reviewing Patterson's file, Castelan gave Patterson a choice of being terminated or resigning from her current position; he also offered her a staff position in the accounting department at her same salary. The next day Castelan presented Patterson a letter that confirmed receipt of her oral resignation and desire to transfer.

Because of these events, a number of staffers saw Patterson crying at work. This caused a buzz among the workers. Skinner reported to Castelan that Patterson had started rumors that she was being terminated because the company was trying to suppress union organizing. At the next weekly directors meeting with the eleven director-level officers, Skinner, and a computer

technician who was there to explain to the directors how to offer Power Point presentations, Castelon first addressed the Patterson matter. Castelan explained that Patterson was voluntarily resigning from her management position and transferring to a staff position in accounting because of difficulties performing the duty of an administrator. A week later, Castelan met a large group of the 117 workers under Patterson and told them only that Patterson had resigned her present job, was transferring to a new position within the company, and that she was very “sad” or “depressed,” and that he was sure they would be kind to her through this difficult transitional period. According to numerous employees who attended this meeting, Castelan spoke of Patterson’s “depression” and said that she was either having problems coming to work on time or “found it hard to get up in the morning and come to work.” Some employees understood these comments to mean that Patterson was suffering from a mental illness.

Following these meetings, Patterson said that some workers she did not know well at all stopped her to console her about her “condition.” Patterson transferred to the accounting department and says that her new co-workers are unfriendly and she thinks they must have heard she was terminated from her prior job. Since her reassignment, Patterson has had mood swings, anxiety, and periods of tearfulness almost every day. Her husband says Patterson has been depressed and feels hopeless and powerless, has lost her ability to enjoy or focus on activities, and that she sleeps excessively. She fears the loss of this job, her career, and her salary.

DIRECTIONS: (1) Evaluate **only Geraldine Patterson’s defamation and invasion of privacy claims**, against any named individual or entity; (2) Caption each tort; (3) Be sure to include possible defenses or responses that the defendants might raise.

END OF EXAMINATION.