

## **Honor Code Acknowledgement Form**

All students in this course are bound to comply with the University of South Carolina School of Law Honor Code in its entirety. Provisions of particular note include:

**2.1 A Student shall not lie.**

A lie includes any form of dishonesty or misrepresentation, including the making of a statement known to be false or the willful omission of a material fact necessary to avoid a misrepresentation of the truth.

**2.2 A Student shall not cheat or plagiarize.**

For purposes of this rule, cheating is construed broadly to include using unauthorized materials, disregarding a professor's rule of anonymity, giving or receiving any unauthorized assistance in the completion of any academic course work, paper, examination, or in connection with a Student's participation in any Extracurricular Activity.

**3.1 A Student shall report those who they believe have violated this Code.**

A Student who has information sufficient to create a reasonable belief that another Student has violated this Code shall promptly report that information either to the Instructor in the affected Academic Program or to the Dean.

Honor Code violations include without limitation: (a) communicating by any means with anyone other than designated proctors and law school officials at any time between the start and the end of the exam except in case of evacuation or other emergency; (b) using a telephone or accessing the Internet at any time between the start and the end of the exam; (c) imaging or reproducing any part of the Exam Packet or Exhibit Supplement; (d) retaining any part of the Exam Packet or Exhibit Supplement after the end of the exam; and (e) willfully, knowingly, recklessly, or negligently disclosing, directly or indirectly, any aspect of the exam to any Section 3 student who has yet to complete the exam.

\* \* \*

On my honor, I hereby certify that: (a) I understand that I am subject to the requirements of the Honor Code; (b) I understand that it applies to all work performed in this course, including this exam; (c) I have neither given nor received any unauthorized assistance in the completion of this exam; and (d) I will neither give nor receive any unauthorized assistance in the completion of this exam.

November 19, 2016  
Tort Law (Bryant Walker Smith)

Sign: \_\_\_\_\_

Print name: \_\_\_\_\_

**\*\*\* TEAR THIS PAGE OFF AND SUBMIT SEPARATELY \*\*\***

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## **Exam Answer Use Form**

Many students find practice exams and questions to be particularly useful in combination with actual student answers from prior years.

This form allows you to specify whether you consent to the future use of your exam answers for educational purposes.

If you consent, your exam answers may be shared with future students. These answers may also be publicly discussed and evaluated. Your name and AEGS number will not be shared.

This form will not be reviewed until after grading is complete. Your choice will have no effect on your grade in this course or in any other course.

Please select one of the following:

I **consent** to the future use of my exam answers for educational purposes.

I **do not consent** to the future use of my exam answers for educational purposes.

AEGS Number: \_\_\_\_\_

**\*\*\* TEAR THIS PAGE OFF AND SUBMIT SEPARATELY \*\*\***

## **Instructions**

### **1. Materials**

- 1.1. You must bring and use a laptop equipped with SofTest. Only answers that you write in SofTest will be evaluated; you will receive no credit for any other writing.
- 1.2. You may bring and use any printed materials, including any notes and any books.
- 1.3. You may access materials on your laptop, but you may not connect to the Internet.
- 1.4. You may not bring phones, cameras, or similar devices into the exam room (with the exception of your laptop).

### **2. Once you are instructed to read the instructions:**

- 2.1. Read these instructions carefully. They consist of two pages.
- 2.2. Separate, read, complete, and return the Honor Code Acknowledgment Form.
- 2.3. Separate, read, complete, and return the Exam Answer Use Form.
- 2.4. Complete the Attendance Pledge on page 4.
- 2.5. Do not proceed past these instructions.

### **3. Once you are instructed to check the exam:**

- 3.1. Write your AEGS number in the bottom right corner of each page of this packet (but not the Honor Code Acknowledgment Form or the Exam Answer Use Form).
- 3.2. Write your AEGS number on only the cover page of the Exhibit Supplement.
- 3.3. Check for any missing or misprinted pages. There should be 8 pages in this Exam Packet (including the Honor Code Acknowledgment Form, the Exam Answer Use Form, and these instructions) plus 57 pages in the separate Exhibit Supplement.
- 3.4. Do not read anything other than these instructions.

### **4. Once you are instructed to begin the exam:**

- 4.1. Carefully review the five numbered questions and allocate your time among them. You may separate pages within the Exam Packet and Exhibit Supplement provided you properly reassemble them at the conclusion of the exam.
- 4.2. Carefully read and reread each question. Unless otherwise stated, the applicable law is that of an unknown US state.
- 4.3. Answer each question to the best of your ability.
  - 4.3.1. Your answers should be carefully reasoned, supported, and structured, as they will be evaluated on organization, completeness, depth, cogency, pertinence, and quality of expression as well as on “correctness.”
  - 4.3.2. You may not ask for any clarification or interpretation of a question. If you must assume any facts or law not included in the question itself, explicitly state any such assumption. Do not “assume away” potential issues.
  - 4.3.3. You are encouraged to carefully outline your responses in SofTest and to strategically use headings and other formatting tools.
  - 4.3.4. Ambiguity in an answer is unlikely to be resolved in your favor, especially if that answer does not take narrative form.
- 4.4. Place each answer in the SofTest field corresponding to the question number.

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- 4.5. Do not reference your answer to one question in your answer to another question.
  - 4.6. Do not include your name or any other identifying information in your answers.
  - 4.7. Do not exceed the word limit for any question.
  - 4.8. Do not exceed the time limit of four hours for the entire exam.
  - 4.9. Do not leave the exam room except (1) to use the restroom, (2) to report to an authorized law school official an issue with the administration of the exam, (3) to seek help from an authorized law school official for a personal problem, or (4) in case of evacuation or other emergency.
  - 4.10. Do not image, reproduce, or remove from the exam room any part of the Exam Packet or Exhibit Supplement.
  - 4.11. Do not communicate by any means with anyone other than designated proctors and law school officials, except as necessary in an evacuation or other emergency.
- 5. Once you are instructed to stop or once four hours have elapsed:**
- 5.1. Stop typing immediately.
  - 5.2. Reassemble the Exam Packet and Exhibit Supplement.
  - 5.3. Return to the proctor (1) the Exam Packet, (2) the Exhibit Supplement, (3) any scratch paper used during the exam, and (4) any other materials that contain notes made during the exam (with the exception of trivial markings on printed materials brought into the exam room).
  - 5.4. Do not disclose, directly or indirectly, any aspect of the exam to any student who has yet to complete the exam.
- 6. In case of emergency:**
- 6.1. Immediately seek help from emergency services (911 or 9-911) or the offices of student affairs (first floor), the registrar (first floor), or the deans (second floor).
  - 6.2. Evacuate as appropriate.
  - 6.3. Do not discuss any aspect of the exam.

**Attendance Pledge**

On my honor, I hereby certify that either (1) I have been absent from no more than six Tort Law classes or (2) I have received an express waiver of this class attendance requirement from the Dean's office.

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AEGS NUMBER ONLY

**STOP HERE.**

**DO NOT PROCEED UNTIL INSTRUCTED TO DO SO.**



### **Question 1**

*1 minute recommended | 30 words maximum*

Who determines the duty element in a negligence claim?

### **Question 2**

*4 minutes recommended | 100 words maximum*

In a jurisdiction with pure comparative fault, a jury evaluating a claim of negligence finds the plaintiff is 20 percent at fault, defendant 1 is 40 percent at fault, and defendant 2 is 40 percent at fault. The jury also determines the negligent act caused \$100,000 in damages to the plaintiff. How much can the plaintiff recover from defendant 1?

### **Question 3**

*15 minutes recommended | 500 words maximum*

In some state courts, a jury can reach a civil verdict by a majority (rather than a unanimous) decision. This means that, for example, a plaintiff could recover from a defendant when five of nine jurors are sufficiently persuaded that the plaintiff has met her burden even though the remaining four jurors adamantly disagree. *Using what you have learned in Torts this semester*, present the best arguments for and against this rule.

### **Question 4**

*40 minutes recommended | 1000 words maximum*

In 2007, Asha's family moved into a home in the Havirdale Public School District that was located on the boundary between two different school zones: Students in one zone attend Old Chappely, while students in the other zone attend Jackson Central. (Both schools include kindergarten through twelfth grade.)

Old Chappely, which is located in and draws primarily from a wealthy neighborhood, has long been considered the best public school in the state of New Carolina. Because of private donations, the school has a large endowment that it uses to supplement its public funding. Students therefore have access to facilities, classes, and activities that are unavailable anywhere else in the district. Because of its reputation, the school also attracts many of the best teachers. Nearly all of the students attend college upon graduation, and many alumni proudly describe how the "Chappely network" helped them land new jobs or discover new business opportunities even decades after graduation.

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In contrast, Jackson Central is a struggling school in a very poor neighborhood. On state-mandated exams, only twenty percent of students perform at or above the satisfactory level. Student, teacher, and administrator turnover is high. The school has no endowment, no gym, no music classes, and very few college prep classes. Only ten percent of Jackson Central's graduates ultimately finish college. Furthermore, the areas around Jackson Central are plagued by violence related to gangs and drugs.

When Asha's family moved, Ganta (her aunt) visited Havirdale's district office to register Asha for school. The desk clerk, Isaac, took an immediate dislike to Ganta and quickly concluded she was from the "wrong" side of town. When Ganta, speaking with a heavy foreign accent, told Isaac that she and Asha had just moved to Havirdale, Isaac replied pointedly, "We don't like registering anchor babies in this town." ("Anchor baby" is a pejorative term for a child born in the United States to a mother who lacks US citizenship or permanent resident status, and it implies that the mother chose the birth location to help secure this status for the child's family.) In fact, Asha was not born in the United States.

Determined that Asha would not attend Old Chappely, Isaac placed Asha into the Jackson Central zone. Two years later, clarifications to the boundary line clearly established that Asha was actually in the Old Chappely zone. However, Havirdale failed to communicate this to Asha or her family, and as a result Asha has remained at Jackson Central.

Asha has been unhappy at school for years. An exceedingly bright student, she has received ridicule from many of her classmates and little encouragement from any of her teachers. Her walk to and from school is a particular source of acute anxiety, as she must pass through an industrial area that has been fought over by two rival gangs for years. Although Jackson Central has worked with local police to protect students on the way to school, it has ignored Asha's route on the assumption that anyone on Asha's side of the contested area would be attending Old Chappely rather than Jackson Central. Asha has faced frequent harassment in this area and, a year ago, tripped and cut her leg while trying to avoid a street brawl.

Asha is now a senior at Jackson Central. Last month, while compiling records for graduation, an assistant principal discovered that Asha should have been enrolled at Old Chappely. Discuss all possible *tort* claims.

## **Question 5**

*180 minutes recommended | 4000 words maximum*

The materials in the separate Exhibit Supplement pertain to the severe flooding that devastated parts of South Carolina in October 2015. These materials cover two *wholly separate* areas of greater Columbia: (1) the area near the convergence of Rawls Creek and the Saluda River downstream of the massive Saluda Shoals dam at Lake Murray and (2) the area within the Gills Creek watershed (including numerous smaller lakes and dams).

Using (a) these materials and (b) your knowledge of tort law, identify and analyze any tort claims that could be brought by:

1. The Funderburks (homeowners near Rawls Creek)
2. Carolina Wildlife Center (a nonprofit near Rawls Creek)
3. Chastain Sample Columbia Group (owners of 4624 Devine Street)
4. TitleMax Title Loans (a tenant of 4624 Devine Street)
5. The estate and family of Horace Tigrace (a fictitious flood victim)

I am testing neither your specific knowledge of the floods nor your specific knowledge of South Carolina law. Accordingly, do not assert or assume (a) any fact not contained in these materials or (b) any South Carolina-specific law not suggested by these materials.

# **END OF EXAMINATION.**