

**TORTS FINAL EXAM  
TAKE-HOME QUESTION**

Professor Simon

Fall 2005

**INSTRUCTIONS**

A. **General**

1. This question will constitute 1/3 of your final exam grade. Be sure your exam contains all three pages.
2. You must bring your answer with you to the in-class portion of the final exam and turn it in with your bluebook.

B. **Format**

1. Your answer must be typed. Type on only one side of a page.
2. You are limited to a total of 900 words (roughly three pages). You will be penalized if you exceed this limit so please be sure to use the "word count" feature of your word processing program.
3. With these word limitations, you must take time to organize your answer. On the take-home portion of the examination, I am expecting higher quality answers than I would expect on an in-class examination. I am looking to see how well you **organize and analyze** the issues raised in the questions. You will get little credit for simply stating conclusions.
4. Your answer should be double-spaced. Use 8 x 11 paper. Use 1.5 inch left margins. All other margins should be 1 inch. Use 12-point Times New Roman, Courier, or Century font.
5. Put your exam number on the top of each typewritten page you turn in. Place a page number on the bottom of each page you turn in.

C. **Honor Code Issues**

1. The Pierce Law School Honor Code applies to this examination. **You are to work alone and may not talk to or work with anyone else.** If you compose your exam in the library or computer center, please do not put drafts of your answers in the recycle boxes.

2. You are to rely solely on the materials you used for the course and are **not to do any additional legal research** on the question once the question has been made available.

3. I believe there are important educational benefits to using a take-home for this type of question. I know this can increase the temptation to improperly collaborate, especially with students under the stress of the exam period. Please do not jeopardize your future by violating the Honor Code on this exam.

4. Your submission of an answer will be deemed to certify your compliance with sections B (2), C (1), and C (2) above.

D. Question (75 Points)

Assume the Mayor of the City of Dorchester is advocating several changes to the state's tort system. He instructed the City Attorney to submit an article supporting his proposals to the City's largest newspaper, the Dorchester Union Leader. Her article is below. The paper will publish the article along with an article by the State Trial Lawyers Association, which opposes the law.

In order to provide a less partisan point of view, the editors have asked a local law professor to write an "op ed." piece. This type of article can be found on the editorial pages of most newspapers and expresses the views of commentators on issues of the day. Specifically, the editors want the professor to comment on whether the city has a valid case for tort reform and whether the proposals are sound. Since you are clearly the best student in his current Torts class, the professor has asked you to draft this article.

These types of articles are designed to communicate clearly to the general public, rather than to other lawyers. Though they are opinion pieces, you will need to do more than just express conclusions. To get exam credit, you must describe the basis for each of your conclusions. Credit will be given for reasoned reflection based on the concepts we have discussed in class.

---

*THE TAXPAYER NEEDS TORT REFORM NOW*

People sue the City of Dorchester for just about any injury sustained on City property or incurred during involvement with a City employee. Because of sympathetic and generous juries, and laws that do not create an even playing field, they often recover in full, even when the City is just the innocent or slightly responsible deep-pocket defendant. In recent years, plaintiffs have been obtaining astronomical awards from juries. The result has been a frightening spike in the City's tort payouts over the past 23 years. There has been a 25-

fold increase since 1978 -- from \$2.1 million to more than \$50 million in fiscal year 2003.

Tort reform will not - and should not - eliminate tort payouts, but instead will contain them to reasonable amounts while still fairly compensating injured plaintiffs. Even if just half of this past year's payout is saved, that money could be used to hire 550 new City workers at \$50,000 a year, who could teach our children, make our streets safer, keep our libraries open, and expand our parks and cultural activities.

#### **RECOMMENDED SOLUTIONS:**

##### **I. No recovery if a plaintiff is predominantly at fault**

The mayor is asking the State Legislature to pass a law barring recovery of damages for any injury where the plaintiff is found to be 50 percent or more at fault.

##### **II. \$250,000 cap on awards for pain and suffering**

The City also proposes to limit awards for pain and suffering to \$250,000. The cap would inject a measure of reasonableness into torts awards, and restore dignity to personal injury litigation.

##### **III. Municipalities should be sued in the court of claims**

This reform would shift claims against the City to the State's Court of Claims where judges, not juries, sit as triers of fact. In 1929, when the legislature waived the sovereign immunity previously enjoyed by both the State and its municipalities, only the State was placed within the protective jurisdiction of the Court of Claims; municipalities became subject to suit before juries in the Superior Court. The State's political subdivisions - and taxpayers - should enjoy the same protection as the State from excessive awards. To achieve this will require a constitutional amendment, which the City has proposed. These reforms would expedite and restore objectivity to tort litigation.

---

E. Have a good holiday break and thanks for a great semester.