

UNIVERSITY OF CALIFORNIA
LOS ANGELES
SCHOOL OF LAW

Prof. Selbst

Law 140 §4. Torts

December 16, 2021

**Final Examination
OPEN BOOK**

(4 hours + 10 minutes for downloading/uploading)

Be sure to avoid making any remarks that will jeopardize your (or anyone else's) anonymity either on the exam or in any other context, before the exam grades are posted. Any questions during or after the exam should be addressed to the Records Office or Dean Marti.

1. This is an open book, open note examination. You may use your casebook, assigned course materials, class PowerPoints, and any notes and outlines you have prepared. You may not watch the recorded lectures or search the internet for answers.
2. You may prepare your answers in any word processing program, but you will need to upload your answers in a single PDF document. Please make sure that the document includes a header that contains your exam number and numbers the pages in a format that includes the total number of pages (page 1 of X, 2 of X, etc.). Write your answers in 12-point font, with lines double-spaced, using one-inch margins. Please start your response to each question on a new page.
3. You may not discuss the exam with any other person once you have downloaded it, nor may you receive aid from any other person in completing the exam. To be clear—because this exam is being given as a take-home exam, once you have downloaded the exam, you may not discuss the exam, or any issues raised by the exam, with any other student **until the entire exam period is over**. Discussion of the exam during the exam period, even with other students you believe have already taken the exam, will be considered a violation of the UCLA Student Conduct Code.
4. The exam has a fact pattern and three questions. I recommend you allocate your time according to the point value of each question.
5. Your answers will be evaluated according to responsiveness to the question, intelligent and imaginative marshaling of the facts and drawing of inferences, familiarity with doctrine and authority, clear expression of your analysis, discussion of policy considerations (where appropriate), and grasp of the relative importance of issues and strength of arguments.
6. If you feel that there has been a typographical error or other mistake on the exam, identify the error and answer the question as you think it should be corrected to read.

* * *

General Information

The state of Hilgard is a new state in the United States. Because the events described below all take place in Hilgard, assume the law of Hilgard applies to Questions 1 and 2. Hilgard does not yet have a state common law, and therefore the common law of all other states and England is persuasive authority. The Hilgard legislature has adopted the following Acts: 1) the Hilgard Comparative Fault Act, which provides for modified comparative fault and preserves the implied assumption of the risk defense; 2) the Hilgard Wrongful Death Acts, recognizing wrongful death and survival actions; and 3) the Hilgard Product Safety Act, which, among other things, adopts the Third Restatement's risk-utility test for design defects. Hilgard has not adopted a statewide workers compensation statute.

An Escape Room Horror Show

Alondra, Brianna, and Clive are friends who love puzzles. This past October, they decided to celebrate Halloween by checking a haunted house-themed escape room that opened nearby in Hilgard City. It is owned and managed by Ghoulish Games, Inc.

An escape room is a puzzle game in which groups are willingly locked into a room or set of rooms and must solve a series of puzzles within a set time limit to find a key and escape. The goal is to escape as fast as possible. If the time runs out, typically after an hour, the group has lost the game and the employees unlock the door, freeing them. Escape rooms often have themes, such as a detective story or a prison escape. This escape room is haunted house-themed, dipping into classic horror and thriller tropes, such as zombie chases, spooky vampires, axe murderers, and general blood and gore. Reviews online raved about the great jump scares and attention to detail in the props.

As the group reserved a slot online, each person was required to sign a liability waiver as a condition of admission. The website explained that because the event can be a little scary, it is not for the faint of heart! The waiver provision read as follows:

Participant agrees to exempt and release Ghoulish Games, Inc., its owners, officers, agents, servants, employees, and lessors from any and all liability, claims, demands or actions or causes of action whatsoever arising out of any damage, loss or injury to Participant related to heart failure or other similar conditions or events while participating in any of the activities contemplated by this Agreement.

Alondra has an arrhythmia, a heart condition that causes irregular heartbeat and can occasionally lead to fainting, but she was not too worried. Each of the three friends signed the agreement.

The afternoon of their reservation was appropriately dark and stormy. When the friends arrived, they were greeted by a vampire feeding on a severed arm. (Don't worry, it was just an actor named Delia and a realistic prop.) Delia slowly looked up as they approached, calmly wiped the blood from her mouth, and then greeted them in a pitch-perfect Dracula impression: "Welcome, my friends, to the scariest dungeon you have ever seen. Only those with a rare combination of genius and bravery can hope to escape with their LIVES." She then chuckled to herself in a particularly menacing way. She stepped aside with her hand out: "Please, enter at your peril."



Figure 1: The welcoming vampire enjoying her snack

Delia then offered some general instructions—in that same thick Transylvanian accent, of course. She explained how an escape room works in general, and then said that all players needed to surrender their cell phones and that they would be monitored on video cameras, so that if they need assistance with the puzzles, they can request it (but if they do, they will be removed from the monthly leaderboards).

After the instructions, the friends were led into a dark hallway lit only by flickering torches, with the door locked behind them. It contained several puzzles. Just as they were finishing the third puzzle, they suddenly heard a “GRAAARR!!!” behind them. With a glance over her shoulder, Alondra saw a zombie shambling at them slowly, arms out in the classic zombie pose. (Another actor, named Eddie.) Alondra, always one to play along, yelled to her friends, “Hurry!”, and then they rushed to finish the puzzle, then sprinted to the end of the hall to get away from the zombie.

The door at the end of the hallway was locked behind another puzzle. As soon as they reached it, a portcullis—a heavy metal gate of the type seen in medieval castles—dropped down behind them with a clang, trapping Eddie the zombie-actor behind it. Eddie, ever dedicated to his craft, continued to roar at the friends from behind the gate while they solved the next puzzle. In short order, they solved it and moved into the next room, hearts racing a bit.

There the group found various knick-knacks, bones, and books. Hanging on the wall was a large scythe, with a sign next to it saying “Watch Out! Deadly Sharp!” It was a clue to one of the puzzles. Soon after they began solving the new puzzles, they realized that they needed to retrieve a skull near the original entrance to finish one of the puzzles. Brianna and Clive said immediately – “Heck no, we’re not facing that zombie in the hallway! We’ll keep working in here!” Alondra replied that she would go back on her own and grab it.

When she returned to the hallway, Alondra saw that the portcullis had been raised and Eddie was gone. This is because just after the group entered the room, Delia has raised the portcullis back up, and Eddie had returned to his hiding place because he knew he would have another chance to scare the puzzlers. Seeing the path clear, Alondra returned to first door to collect the skull. Eddie crept out from his hiding place, ready to scare her again.

Meanwhile, in the half hour that the friends were in the escape room, the storm had gotten worse. Just as Alondra was picking up the skull, lightning struck the building, and the power went out. The only remaining lights were the dim torches at the end hallway, which were battery operated. Alondra heard a crash and a yell behind her. She turned around saw that the portcullis had slammed down again. Next to it, on the ground and writhing in pain, was Eddie, his crushed foot pinned under the metal gate. Alondra rushed to try to help him, but he was on the other side of the portcullis, and it wouldn’t budge. She started yelling out for help, but there were no responses. After a minute or so, she moved back to find the

door they all entered through. Still locked! She was trapped! She began to panic, her heart pounding, and suddenly, she fainted. As she fell to the floor, her head caught a corner of a chair. She landed on the floor unconscious and bleeding from the head.

Brianna and Clive did not hear any of this through the thick door. Initially, they both assumed that the pitch-black darkness was a part of the thematic spookiness. After two minutes, though, Brianna became worried that something was wrong. She started scrambling to find the door that they entered from, reaching out for the wall so that she could follow it to the door. As she started groping along the wall, her hand closed around the blade of the scythe. The warning sign was true to its word; the scythe cut deep through the base of her thumb. She screamed out in pain and grabbed her hand in the darkness. Clive ran over to help her, yelling out for help.

After about 10 minutes in the dark, and the two friends yelling for help, a second, hidden, door to Brianna and Clive's room opened and Delia stepped in with a flashlight. Brianna yelled to call 911 and get a first aid kit, and the Delia ran to do so. After making the call, she returned with the flashlight, leading Brianna and Clive out to the lobby, illuminated by the gray light through the windows. After a quick examination it became clear that Brianna's hand was almost severed clean through, and Clive spent the few minutes until the ambulance came trying to hold it together and stem the bleeding. When they got their cell phones back, Clive texted Alondra: "Dunno where you went—have to run to the hospital. Brianna cut her hand badly. Catch up later."

While Clive was applying first aid to Brianna, Delia ran back to find Eddie, seeing his crushed foot. She returned to the portcullis controls, but the power had not yet come back on, so it wouldn't lift. She called 911 again. When the EMTs came to assist Brianna, they also went to check on Eddie. But because they couldn't do anything right then, they called it in and drove Brianna to the hospital, with Clive accompanying. Brianna's hand required extensive surgery that kept her out of her programming job for three months. She never regained full use of the hand, but she learned to type just as well with just her left, and then returned to her job.

In the confusion over Brianna's injured hand, no one came to check on Alondra until the power came back on an hour later, and the video cameras showed her unconscious on the floor. As soon as Delia saw, she called for yet another ambulance, and she heard that the fire department was already on the way. The fire department's EMTs eventually arrived, and they were able to free Eddie from the portcullis. Alondra and Eddie were both loaded in the ambulance. Eddie's foot was crushed, and he eventually needed to have it amputated. Alondra died on the way to the hospital. The EMTs noted in their report that by the time they got to her, she was unlikely to have survived much longer no matter what they did.

Question 1. (60 percent)

You are an associate at a small plaintiffs' firm in Hilgard City. Brianna and the executor of Alondra's estate have both come to you, wanting to sue Ghoulish Games in negligence.

The partner on your case wants a memo evaluating Alondra and Brianna's negligence claims. She thinks that besides suing Ghoulish Games, it is also worth looking into a case against Clive. She instructs you to evaluate all plausible claims and defenses, how likely each is to succeed, and what damages are likely. Please discuss each party's claim separately, and if one person brings a derivative claim, explain what that claim is and whether there are any limitations based on it. Write the memo.

Question 2. (25 percent)

Ghoulish Games purchased the portcullis from an amusement company called Fantasy Fixtures, Inc., that specializes in bespoke props and sophisticated set designs meant to evoke medieval era castles and dungeons. Eddie has sued Fantasy Fixtures alleging manufacturing, design, and warning defects. You are a solo defense attorney representing Fantasy Fixtures.

During discovery, you have learned that the portcullis is remotely controlled by an operator, here Delia. In the normal course of operation, the portcullis was supposed to keep Eddie from reaching the participants the first time through the hallway. Then it was supposed to be raised immediately after, and not used again during the hour. On the afternoon in question, Delia lowered it and raised it as appropriate, and because she had no further duties, was no longer focused on the mechanism.

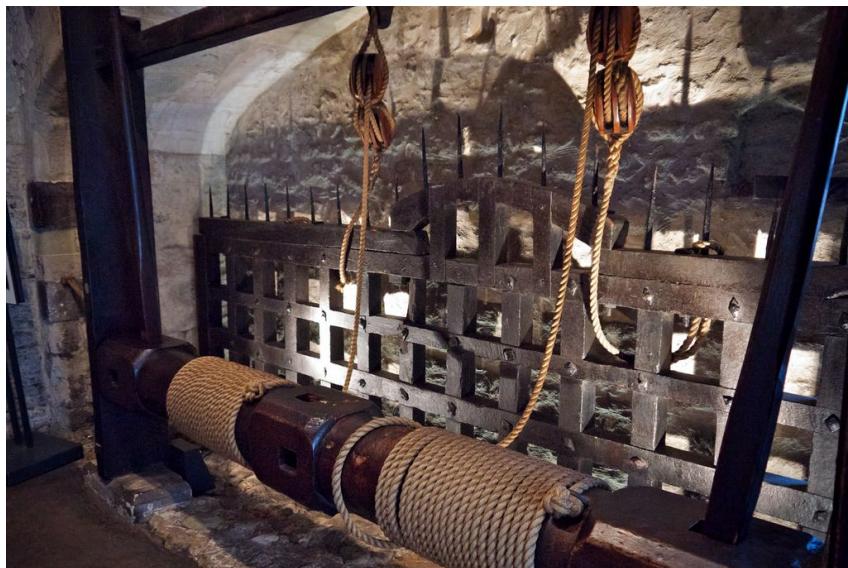


Figure 2: Part of the portcullis control mechanism. Not pictured: The remote control and safety mechanisms designed by Fantasy Fixtures, Inc.

The portcullis is raised and lowered via a simple pulley system with electronic controls. The bar pictured in Figure 2 winds the rope to pull it up and releases the rope to lower it. The bar is attached to a motor, which is controlled remotely by the operator. The motor's controls include direction (up/down) and speed (high, medium, low).

The controls also include an infrared detection system, like those typically attached to garage doors, which would prevent the portcullis from lowering if it was obstructed. There was no physical safety mechanism such as a latch that blocked the gate's movement. Ghoulish Games wanted the portcullis to move quickly and quietly, as there is a short time window between the participants and the zombie chasing them where it must drop. A physical safety mechanism would first have to be moved out of the way before deploying the portcullis, so Fantasy Fixtures designed the system with an electronic one only.

An investigation after the incident determined that the portcullis dropped after the lightning strike shorted out both the control and safety circuits. A forensic analysis of the circuitry showed that the controller and safety mechanism were wired together. Fantasy Fixtures designs different projects for each customer, so no two projects are exactly alike, but they have designed projects with similar safety mechanisms before. The plans produced for the portcullis included schematics for both circuits but did not explain whether they should or should not be wired together. When Eddie deposed Fantasy Fixtures'

project director, he testified that did not know whether they typically wired the controller to the safety mechanism.

The project director also testified that Fantasy Fixtures tested their electronics for surges and discovered that they could short out with the same level of current as some household computer equipment. Thus, in the installation manual Fantasy Fixtures included a warning: “Warning: Only plug the device in with a surge protector. Electrical surges can damage the equipment.”

You hired an electrical engineer as an expert. In his deposition, he explained that it is not generally more dangerous to have the controller and safety circuits physically connected than not because they are attached to the same power source. However, in this instance, he believes that wiring them together made it more likely that they both shorted at the same time, whereas if they were separate, there was some chance one of the circuits would have remained operational. He also explained that surge protectors can wear out over time, rendering them less able to protect against electrical surges, and that lightning strikes frequently cause damage to consumer electronics. The portcullis was plugged in with a surge protector of unknown age.

Discovery has been completed and you plan to file a motion for summary judgment, arguing that the evidence Eddie has acquired in discovery does not support a cause of action for any of his products liability claims. In Hilgard a motion for summary judgment shall be granted if the evidence shows “no triable issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Please write the brief. Remember that Eddie will have a chance to respond and failing to acknowledge where he has valid points, even if they don’t win the day, will cause you to lose credibility with the court.

Question 3. (15 percent)

[Note: This question is unrelated to the issue spotter above]

The tort of false imprisonment is an intentional tort that we did not discuss in class. The current draft of the Restatement (Third) of Torts: Intentional Torts to Persons defines the tort as follows:

An actor is subject to liability to another for false imprisonment if:

- (a) the actor intends to confine the other within a limited area, or the actor's intent is sufficient under [transferred intent];
- (b) the actor's affirmative conduct causes a confinement of the other . . . or the actor fails to release the other from a confinement despite owing a duty to do so; and
- (c) the other is aware that he or she is confined or the other suffers bodily harm as a result of the confinement.

Many of the defenses available to battery and assault are available to defend against a claim of false imprisonment, including consent and self-defense.

In addition, most jurisdictions recognize a defense known as the “shopkeeper’s privilege.” “The shopkeeper’s privilege provides that a person who reasonably believes another person has stolen, or is attempting to steal property, is privileged to detain that person in a reasonable manner and for a reasonable time to investigate ownership of the property.” *Grant v. Stop-N-Go Mkt. of Texas, Inc.*, 994 S.W.2d 867, 873 (Tex. App. 1999).

Using the theoretical frames we have learned this semester—corrective justice, law and economics, and critical race theory—please analyze this defense. How do each of these theoretical frames help us to

understand the consequences of this defense? Based on a cumulative understanding of these theoretical frames, should such a defense exist in its current form? If not, should it be reformed or abolished? If reformed, how? Please support your answer with specific references to the goals or critiques of tort law that each theory holds.

* * * *

END

* * * *

Have a safe and happy winter break! You earned it!

* * * *