

**UNIVERSITY OF UTAH
COLLEGE OF LAW
EXAMINATION COVER SHEET**

Student Examination Number: _____

**Law 6140-001
TORTS
PROFESSOR TENEILLE BROWN**

FALL 2010

DEC 13, 1:00pm

⌚ **Time Allowed: 4 HOURS**

Authorized Materials: This exam is open book and open notes; please do not cite to any materials other than those that were assigned for class. You must work alone.

Special Instructions: Please engage with the facts provided here rather than just transcribing from your outline. Justify all of your answers and acknowledge counterarguments. Substance is more important than form, but form (organization, proper grammar) is still exceptionally important.

GENERAL INSTRUCTIONS FOR ALL EXAMS:

1. Exams do not leave the exam room! Write your exam number on your copy of the examination questions, and returned it to the proctor at the end of the exam.
2. Students may NOT take any bluebooks or scratch paper from the examination room, whether blank or used. Return to proctor.
3. If you are using a bluebook print your exam number, the title of the course and the instructor's name on the front of each bluebook.
4. Number each bluebook (1 of 3, 2 of 3, 3 of 3, etc.) and place all bluebooks and examination questions inside the first numbered bluebook.
5. If the examination utilizes a computer answer sheet (Scantron):
 - You must use **BLACK** or **BLUE INK** only; no pencils
 - You may use **CORRECTION TAPE** only; no liquid paper
 - Print your examination number in the box found in the lower left-hand section of the form. Write the number in the first 4 spaces, and zero-fill any remaining spaces.

For example, if your examination number is 2983:

IDENTIFICATION NUMBER

2	9	8	3	0	0	0	0
---	---	---	---	---	---	---	---

Fill in the bubbles corresponding to the numbers written.

TORTS 6140-001 (BROWN) FINAL EXAM QUESTIONS

Question 1 (5% of the exam total)

In negligence, the existence of a duty is a legal issue for the judge to decide. Briefly explain why this is the case in our common law of torts.

Question 2 (10% of the exam total)

The European Union and most of the rest of the world do not impose strict liability for defective products on retailers or product designers. Instead, strict liability may only be imposed on entities the EU labels as “producers,” which include manufacturers of the finished product, its component parts, or any of its constituent raw materials. The definition also includes importers of products from outside of the EU. Is this a better rule than the rule embodied in the U.S. Restatement on Torts? Why or why not?

Question 3 (85% of the exam total)

Please read the attached news clipping, then answer the following questions:
(excerpt attached)

These tragic facts highlight the problem of bullying in our schools. First, how might tort law address this situation, either prospectively or retrospectively? Second, do you think tort law ought to redress these wrongs, or would they be better left to individual school regulations and/or the criminal law? Why? Finally, if you were Phoebe’s parents and had the emotional and financial strength to sue, whom would you sue first, and under what tort theory(ies)? Please identify any additional facts you would like to know before pursuing this case. As time is limited, prioritize your strongest arguments but address as many as you can.

Best of luck, and I hope you have a terrific winter break.

The following is an edited composite from the BOSTON GLOBE article *Who Failed Phoebe Prince?*¹ Please assume all of the facts stated below are true.



Phoebe moved from Ireland to South Hadley, Massachusetts in July 2009. At first, Phoebe enjoyed being the new girl. She was beautiful: pale and petite, with wavy brown hair, and a wide smile. She dressed for fun and in full color. “Phoebe was undeniably gorgeous,” says Eadaoin Larkin, a close girlfriend back home in Ireland. “She had a great sense of humor, she was fun to be around, she was a very smart girl, and she was very passionate.... Girls envied her.”

“She got popular quick,” says friend Tara Berard, a South Hadley freshman. “All the guys wanted to talk to Phoebe.” Phoebe went with her new friends to football games and movies. She listened to techno music and joked about how everyone in Ireland smells like cabbage. “Phoebe had an opinion of everything; she was one of the smartest people I’ve ever met,” says friend Katie Gingras, a fellow freshman.

A couple of months into the fall semester, Phoebe began a brief relationship with Sean Mulveyhill, a senior who was captain of the football team. Sean was popular and something of a score. He had dated (and some say never stopped dating) Kayla Narey, a pretty blond junior. Shortly before Phoebe’s 15th birthday, in November, Sean reunited with Kayla, and suddenly Phoebe found herself on the wrong side of the popular crowd.

That’s when the name-calling began: in person, and online. *Stupid b**ch, Irish sl*t, Irish whore, ho.* “Close your legs and stop sleeping with people’s boyfriends or you will get you’re a** kicked,” Ashley Longe, a round-faced junior, posted on Phoebe’s facebook page, which Phoebe’s mother later made her take down when she read the posts. Two anonymous high school seniors published Phoebe’s cell phone number on Craigslist. Hateful words then found their way to her via text as well: *slut, b***h, c**t.* She had to change her number. For more than two months, the comments came almost daily in the halls or online.

Flannery Mullins, a high-honors senior and decorated equestrienne, also joined in, as Phoebe began talking to Flannery’s on-again-off-again boyfriend. Flannery cornered Phoebe in the bathrooms and chased her through the halls, yelling “Irish slut.” On January 8, Sharon, Flannery’s best friend, screamed at Phoebe for minutes during lunch; Phoebe reported her to an assistant principal who sent Phoebe back to class while he handled another matter. Sharon then followed Phoebe into Latin class and continued to threaten to beat her up. Phoebe started weeping, but managed to collect herself shortly before class began. The school suspended Sharon for a day.

Phoebe was scared. She wasn’t tough, she confided to a friend, and she didn’t know how to fight. Between classes, she started ducking into bathroom stalls or trying to hide in crowds. Most days, she cried as she made her way to and from her locker. Occasionally she passed a teacher or other member of the staff while she was being name-called. “I remember taking attendance and a bunch of the kids said that Phoebe was having some trouble so she was at the counselor’s office,” says Cindy Kele, a South Hadley substitute teacher. “They said it like it was a matter of fact, like everyone knew and she was there all the time.”

School “has been close to intolerable lately,” Phoebe texted a friend the next week. By now it was Wednesday, January 13, 2010. Phoebe told her friend she’d been accused of “taking away” another girl’s boyfriend, that the threats were getting physical, and that even Sean and his friends wouldn’t leave her alone. She had been to see the high school counselor, Sally Watson-Menkel, as well as the school nurse.

¹ Written by Alyssa Giacobbe, May 23, 2010.

After school that day, Phoebe walked past a group of students who'd gathered outside the auditorium. "Here she comes," Sean reportedly told Ashley, nodding in Phoebe's direction. "Whore!" Ashley allegedly shouted on cue as Phoebe passed. The crowd fell silent. "Whore," Sean echoed. Ashley said, "Why don't you just open your legs?" Kayla started to laugh. Phoebe kept on moving. Home was a half-mile away, along well-trafficked Newton Street. Just beyond school grounds, a car slowed alongside Phoebe as she walked. From the passenger seat, authorities say Ashley hurled an empty energy-drink can at Phoebe. Phoebe, crying, kept walking. "Whore!" Ashley yelled, as the car sped off.

Around 4:30 p.m. that same day, Lauren Prince, 12, came home from school to find her older sister Phoebe hanging by a scarf from a beam in the apartment's stairwell, dressed in the clothes she'd worn to school. The orange scarf was the one Lauren had given Phoebe for Christmas. Phoebe had committed suicide.

The District Attorney (DA) originally filed criminal charges of harassment against Sharon, Ashley, Kayla, and Flannery (the girls identified above as bullying Phoebe). Counsel retained for one of the defendants planned to argue that Phoebe had been taking anti-depressants and had attempted suicide once before in Ireland. But the criminal case has since cooled, and it is not known whether the DA will proceed. Many community members questioned whether the DA had been too aggressive in criminally charging the teens, and felt that releasing their pictures and names to the local news was excessive.

South Hadley High School has a no-tolerance policy regarding bullying, with disciplinary consequences that included expulsion, says the district superintendent. However, bullying had not been defined — it was up to the principal to determine what constituted it — and to enforce it.
