

Monterey College of Law

Torts Final Examination

Spring 2025

Professor J. Martin

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours

**QUESTION ONE**

The DOT Corporation (hereafter "DOT") manufactures and sells laser-beam pointers -- hand-held and battery-powered products that produce a red beam of light which casts a small point of color. The DOT laser pointers are used by teachers and speakers, or as a novelty item.

The DOT laser pointers are packaged with a warning card that reads: "Do not point the laser beam at the eyes of any living person or animal".

DON purchases a DOT laser pointer and, one week later, easily opens the item's case by removing a single screw. DON sees that the item's power source is a single, onevolt battery. DON removes the factory-installed battery and replaces it with a battery that provides fifteen volts. DON throws away the warning card without reading it.

The next night, DON is with PAM at a movie theatre. While the theatre is dark and the movie is playing, DON indicates that he is about to shine the laser-beam point of light onto the movie screen. PAM is immediately critical of DON's behavior and she attempts to grab the pointer from DON's hand. When she does so, the pointer beam becomes aimed at her right eye and the beam of light permanently injures that eye.

An expert who has inspected the laser pointer product will testify that the substitution of the higher powered battery makes the product's light beam extremely unsafe for human eyes.

- DISCUSS: 1. PAM vs. DOT in Strict Products Liability  
(Do NOT discuss Negligence or Warranty causes of action)
2. PAM vs. DON in Strict Products Liability  
(Do NOT discuss Negligence or Warranty causes of action)

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## **QUESTION TWO**

PAM is an exceptional student at an American university and she recently won an academic award that resulted in state-wide media attention. PAM can speak several languages, including Ukrainian. PAM's dormitory roommate is DONNA.

One morning in her dormitory room, PAM uses her cell phone to place a call and she speaks Ukrainian during the call. DONNA is in the same room and can overhear PAM's voice but does not understand the language or the content of the call. DONNA believes PAM is speaking Russian.

After PAM leaves the dormitory room, DONNA goes to PAM's desk and, within a drawer, finds a recent photo of PAM, taken when she was in communist Cuba, as part of a student exchange program. In the photo, PAM is waving a small Cuban flag.

DONNA immediately emails the city newspaper and, after identifying PAM by name, states "PAM is a university student who hates America and is a communist. She is possibly a spy for Russia". DONNA also electronically sends the photo taken from PAM's desk. The next day, the newspaper publishes DONNA's email in a "Public Forum" section, together with the photo.

Within two days, PAM's academic award is rescinded because PAM is deemed to be too politically radical. In fact, PAM's phone call was to her grandmother who lives in Ukraine. PAM is not Russian, has never been a spy, and loves America. PAM is upset about DONNA's actions and comes to your law office for advice.

- DISCUSS:
1. PAM vs. DONNA in Defamation
  2. PAM vs. DONNA in Invasion of Privacy

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### **QUESTION THREE**

PEGGY, an airline pilot with World Airlines, began a sexual affair with DOUG, also a pilot with the same employer. That relationship lasted one year and included the frequent recreational use of cocaine, an illegal activity in those circumstances.

PEGGY ended the affair with DOUG and has not used cocaine for over two years. DOUG has frequently called PEGGY and attempted to convince her to resume their affair but PEGGY has refused to see DOUG and has resigned from her position with World Airlines. PEGGY has applied to be a pilot with Earth Airlines.

On July 5, PEGGY received a phone call from Earth Airlines during which she was offered employment as a pilot. On July 10, PEGGY signed her employment contract with Earth Airlines. On July 25, PEGGY received another phone call from Earth Airlines, informing her that the offer of employment was revoked.

PEGGY learned from another pilot with World Airlines that, on July 15, DOUG mailed letters to several people who continue to work in the airline industry, including the hiring manager and CEO of Earth Airlines. DOUG's letter states that PEGGY is a frequent user of cocaine and she would create a serious danger if allowed to pilot an airplane. PEGGY also learns from a reliable source that the revocation of her employment contract with Earth Airlines was based on DOUG's letter.

Six months later, PEGGY is still unemployed as a pilot and she believes that DOUG's letter could influence any prospective employer in the airline industry. PEGGY is under extreme economic pressure and is delinquent on her home's mortgage payments. PEGGY is fighting the temptation to use cocaine again.

**DISCUSS: PEGGY vs. DOUG in Interference with Contractual Relations**

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1. ORGANIZATION - 2/10  
2. STATEMENT OF LAW - 2/10  
3. WRITING ANALYSIS - 1/10

1)

1. Pam may pursue a claim against DOT under a theory of **strict products liability (SPL)** for the physical harms she suffered.

**Strict Products Liability:** A commercial seller that sells a **defective** product that is **unreasonably dangerous** is strictly liable to a **foreseeable** user or **consumer** for **physical harms** resulting from use of that product, even if all possible care was taken to prevent harm. A defective condition includes a manufacturing defect, a design defect, or an informational (failure to warn) defect.

**A. Commercial Seller.**

A commercial seller is any manufacturer, distributor, seller, or other party regularly engaged in the stream of commerce of a product. Here, DOT Corp manufactures and sells a hand-held battery powered red laser-beam pointers.

"IN THE BUSINESS OF SELLING..."

Thus, DOT is a commercial seller.

**B. Defective Product that is Unreasonably Dangerous**

A product has a defective condition if it has a **manufacturing** defect, **design** defect, or **informational** (Warnings) defect.

**1. Manufacturing Defect:** A product has a manufacturing defect if the product itself departs from the intended design rendering the product unreasonably dangerous to a consumer or bystander at the time the product leaves defendant's control. There are no facts to show that the laser-beam departed from its intended design or had a flaw due to manufacturing defect.

NOTE  
NICE  
ANALYSIS 😊

Pam will assert that the DOT laser is not a novel piece of science, it is not world changing, and it is not an imperative necessity for mankind. It's a pointer. For centuries, we have used sticks and thin retractable metal pointers to achieve the same "utility." Such designs, while risky if running with it or jabbing it at others, likely are more cost effective, and have a far smaller risk of causing actual permanent blindness than a laser pointer that can so easily be modified. The likelihood of harm from use of the modified pointer far exceeds any feasible alternative, of which there are many.

Under RUT a design defect exists.

c. FAD

Under the FAD, a product is defective if at the time it was sold a feasible alternative design existed that would make eliminate or greatly reduce the risk of harm without substantially increasing the costs of production or impairing the utility of the product. Therefore, there is a defect under the FAD test.

D will argue that the design as is was sufficient and didn't require consideration of an alternative design. Rather, they will assert Don did not use the product in the intended or in a foreseeable way. DOT will argue that the design was never intended to be high powered, which is why they designed the product to come with a low power battery source. They will argue that someone putting in a high powered battery was unforeseeable and therefore they had no duty to protect against an unforeseeable risk.

P may argue that the laser beam could have had a built in rechargeable battery that cannot be replaced at all by a novice, and only charges with a USB stick, thereby preventing anyone from making the laser high powered and dangerous to bystanders or users. Furthermore, DOT could have designed a casing that is more secure than a single

screw that can be easily removed to change out the factory installed battery such as special locking back frustrating access.

P will argue that such tampering with a "novelty" item was foreseeable and DOT should have designed to protect against tampering. The fact that people buy it just to play with it makes it susceptible to the curiosities of children and tinkerers alike. Furthermore, with this foreseeable result in mind, DOT should have designed a casing that is more secure than a single screw that can be easily removed to change out the factory installed battery, a likely inexpensive and sufficient option to ensure safety.

Absent a defense to the contrary, a court would likely hold the other laser beam to pale in comparison to the significant risk of bodily harm it poses given its existing design.

### **3. Warnings/Informational Defect:**

A product has a warnings defect if it lacks adequate warnings or instructions which advise or alert consumer to non-obvious risks of harm or danger at the time the product leaves defendant's control. DOT will argue that their laser pointers are packaged with a warning card that clearly reads "DO NOT POINT THE LASER BEAM AT THE EYES OF ANY LIVING PERSON OR ANIMAL." They will argue that this was adequate warning of the potential hazards for their product, if used as designed and not modified.

*Supra consumer expectations re significant risk of red dot.* P will argue it was DOT's duty to provide adequate instruction and warning to consumers of the product that are not aware of the hidden danger.

Furthermore, P will state that DOT did not provide adequate warnings and instructions on how to properly change the battery or use the laser pointer. She may assert that having an insert card that is so easily thrown away is not substantial enough because it is

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foreseeable consumers would toss any extra "scrap" paper that is often included in product packaging.

Rather, P may argue, the item itself should have large print warning engraved on it, and specifically inside the battery casing so that anyone trying to change the battery would take note of the warning. She may suggest a sticker hard to remove that is yellow color, or has icons indicating potential blindness risk if modified with a different power battery.

Thus, in consideration of the reasonable additional warnings that DOT could have included to make informational material adequate, a warning defect exists.

**C. Foreseeable Plaintiff:** A foreseeable Plaintiff is any consumer, user, or bystander that may purchase, use, or otherwise be directly harmed by the defective product. The DOT laser pointers have small red dot that allow a person to point to something relatively far away. The pointers are used by teachers and speakers, or as a novelty item. It is reasonable and highly foreseeable then that a young man would enjoy the novelty of the laser pointer, especially in a dark movie theater where he can act out his juvenile whims and impress a girl. Therefore, any bystander near Don while he was playing with the modified laser beam would subjected to a heightened risk of substantial injury.



#### D. Causation

a. **Actual Causation:** Pam will argue that **but for** the laser beam light hitting Pam's right eye, Pam would not have suffered permanent injury to her right eye. This direct causal link is further confirmed by an expert that inspected the laser and confirmed the laser equipped with a higher powered battery rendered the product extremely unsafe for human eyes.

However, DOT will counter that the actual cause as per the expert statement is "laser equipped with a higher powered battery rendered the product extremely unsafe." They

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will further point out that it was Don's modification of the product that rendered the product unsafe was the direct and actual cause of P's harm.

**b. Proximate Causation:** Defendant may be held liable for any harms that are a foreseeable result of the product's defect and may limit a defendant's liability for harms resulting. Here, DOT will argue that Pam's attempt to grab the pointer from Don is the proximate cause of her injury. They will argue that Pam contributed to her own harm by being overly hasty and aggressive with the product, such that she failed to maintain control of where the product was pointing.

However, Pam may counter that while she may have been overzealous in grabbing at the pointer, the laser pointer would not have damaged her eye had Don not been able to easily remove the screw, access the battery compartment in the first place to install a high powered battery. Therefore it was DOT's design defect (using a small screw and no other feasible alternative design) that rendered the product unreasonably unsafe.

Considering all circumstances, a court would likely find DOT's design flaw to be the Actual and Proximate Cause - *Supra, FAD, re foreseeability* - because had the design not rendered the product unreasonably dangerous by allowing easy modifications, P would likely not have suffered harm.

### **E. Damages**

P suffered both physical harm and likely economic harm due to the product defect. She lost sight in her right eye permanently, which now will adversely affect her depth perception thus limiting the types of jobs that she may be qualified for, potentially resulting in long term economic harm, beyond the immediate economic harms such as hospital bills, and loss of wages.

### **F. Defenses**

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1. **Modification - DOT** will argue that the modification to the battery power by Don absolves them of liability for harms caused by the product. They will assert that but for Don removing the items case and changing the power source from the factory installed battery to a battery that provides fifteen volts, they cannot be held liable. They did not intend the product to be used in this manner. Because Don used the product in an unforeseeable manner which caused the increased risk of harm, DOT can't be found liable.

However, P will counter that the laser pointer would not have damaged her eye had Don not been able to easily remove the screw, access the battery compartment in the first place to install a high powered battery. Therefore it was DOT's design defect (using a small screw and no other feasible alternative design) that rendered the product unreasonably unsafe.

2. **Contrib Neg/Assumption of Risk** - Dot may argue that when P grabbed at the pointer she assumed the risk of harm to her eye. However, this argument would likely fail because the average consumer would not expect the little red dot to cause severe injury and but for Dots design flaw, the laser would not have been easily modified to a dangerous state.

SHE DID NOT FULLY UNDERSTAND THE RISK.

Therefore, the defenses of modification and contrib neg would fail.

**Conclusion:** DOT will be found strictly liable for the physical and related economic harms suffered by Pam for designing and distribute a product that is unreasonably dangerous to the average consumer at the time it left DOT's control.

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2. Pam may fail should she pursue a claim against DON under a theory of strict products liability (SPL) for physical harms she suffered, because Don is not a commercial seller of the laser-beam nor is he affiliated with the DOT corp beyond being a consumer of their product.

**Strict Products Liability:** *supra*

**A. Commercial Seller.** A commercial seller is any manufacturer, distributor, seller, or other party regularly engaged in the stream of commerce of a product.

Here, DON is not engaged in the stream of commerce related to the manufacturing, sale, and distribution of the laser beam.

**B. Conclusion:** Don is a consumer of the product and thus cannot be held liable under a theory of Strict Product Liability.

1. ORGANIZATION - 9/10  
2. STATE OF LAW - 9/10  
3. WRITING & ANALYSIS - 9/10

2)

**Pam vs. Donna in Defamation**

A publication of defamatory material made to a third party who perceives it as defamation and understands it pertains to the plaintiff causing damages.

OK

**Publication**

Did Donna make a publication of Pam when she emailed the newspaper?

Donna sent an email and a picture of Pam to the news paper. Donna's publication is libel, a publication that is written and that is more permanent. Donna made the publication as soon as she sent the email and the picture of Pam.

**Defamatory Material**

Was Donna email and picture a defamatory material?

Here, Donna said a defamatory statement that is material because she was not expressing her opinions she was stating facts. Donna said:

1. "Pam a University student who hates american and is a communist and is a communist "
2. "She is possibly a spy for Rossia"

These statements are defamatory and can cause her community and her fellow students to shun and avoid her. These type of statements can harm Pam's reputation about her being a student. Pam was an exceptional student at the University and it is foreseeable she will be avoided by people who love "America."

" SHUN & AVOID "

### Made to a Third Party

Donna made the above statements to the newspaper and she knows the newspaper has a wide audience. Donna perceives this statement as defamation because she felt the need to share this information with the newspaper. Donna and others will know this pertains to Donna because she is mentioned by name. Donna's statements here were made to a third party.

### Causing Damages

Donna defamation statement and email is the actual and proximate cause of Donna's damages.

But for Donna not sending the email the newspaper, the newspaper would have not been published in the "Public Forum". This is a mechanical connection between Donna's actions and the publishing of the defamatory material by the newspaper. Donna's actions are the proximate cause because the next day after she sent the email, the newspaper publishes the email and the photo of Donna. This is immediate with no other intervening causes that state the newspaper received the information from someone else.

### Defenses in Defamation

C/L  
CONSTITUTIONAL

Donna could claim the defense of Conditinal Privilege and state she had a duty to inform all fellow Americans. She will also say there is a recipirical duty to speak and share what she found. However, this claim will not succeed because INTEREST TO HEAR Donna had actual malice because she made up the statements.

Donna will also raise the defense of Newsworthy and state the information is newsworthy because Pam is a person who has won an academic award that resulted

in a state wide media. Donna will state that the community, the university students want to know.

Donna will also likely claim that her email and picture were the Truth and therefore there is no claim against her. But, this claim will quickly fail because the fact that Pam was in communist Cuba and took a picture with the Cuban does not mean she hates Americans or is a Spy.

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### **Pam vs. Donna in Invasion of Privacy**

#### **INTRUSION INTO SECLUSION**

##### **Act Done with Intent**

Donna is Pam's roommate and she intentionally over hears a conversation Pam is having over the phone. Donna does not know what Pam is saying and she assumes she is talking Russian.

##### **Casing Intrusion into Seclusion**

Donna speaks several languages, but she has a conversation in Ukrainian, showing she wanted her conversation to remain private. Donna goes into through Pam's desk drawer where she finds a picture of Pam waving a Cuban flag. This is an intrusion because Pam likely kept that picture in the drawer because she did not want to display it.

##### **Injury Peace of Mind**

Pam is upset about Donna's actions. Pam will now worry because her academic award has been rescinded.

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**Without consent or Privilege**

**DISCLOSURE OF PRIVATE FACTS**

**Act Causing Disclosure**

Donna overheard a conversation in Ukrainian, where she assumed Pam was talking in Russian. Donna also went through Pam's desk drawer and she took a picture that was put away by Pam. The fact that Pam had this picture in the drawer means this picture was private and she did not want anyone to see it.

**Publicity to Others**

Donna committed the act of emailing and sending the newspaper information about Pam.

**Disclosure of Private Facts**

Donna emailed the newspaper, "Pam is a university student who hates America and is a communist. She is possibly a spy for Russia" and she also sent a picture of Pam holding a Cuban flag.

**Without Consent or Privilege**

**FALSE LIGHT**

**Giving Publicity**

Donna gave Pam publicity when she wrote a false statement and sent the picture of Pam holding the Cuban flag.

Donna gave Pam publicity by sending an email to the newspaper.

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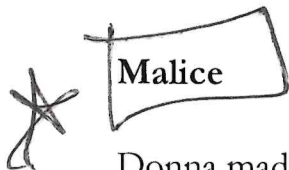
PRIVILEGE OF  
PUBLIC INTEREST

### To a Third Party

Donna sent an email and a picture of Pam to the newspaper. The email contained information that was not true and Donna was not certain it was true because she does not speak the language Pam was talking.

### False Light

Donna placed Pam in false light by saying "Pam is a university student who hates America and is a communist. She is possibly a spy for Russia"



Donna made the statements with malice because she does not understand what Pam is saying so she makes it up. In fact, Pam is not Russian, she has never been a spy and she loves America. These statements that placed Pam in false light are done with malice because Donna did not know what Pam said on the phone and she had reckless disregard for the truth because she never confronted Pam to ask her.

### Defenses in Invasion of Privacy

Donna could claim the defense of Conditional Privilege and state she had a duty to inform all fellow Americans. She will also say there is a reciprocal duty to speak and share what she found. However, this claim will not succeed because Donna had actual malice because she made up the statements.

Donna will also raise the defense of Newsworthy and state the information is newsworthy because Pam is a person who has won an academic award that resulted in a state-wide media. Donna will state that the community, the university students want to know.

Under Constitutional Privileges, Donna will claim that Pam can be considered a private figure because and therefore Pam has to prove the statements were false and negligent.

1. ORGANIZATION - 9/10  
2. STATE OF LAW - 9/10  
3. WRITING ANALYSIS - 8/10

3)

**Peggy vs. Doug in Interference with Contractual Relations**

**Valid Contract**

There was a valid contract between Peggy and Earth Airlines (EA) because Peggy received a phone call where she was offered employment as a pilot. Here, Peggy has a valid employment contract with EA.

**Intent**

Doug's intent was for Peggy to resume their sexual affair and because Peggy refused Doug intended she not get a job at another airline. So he sent letters to several people in the airline industry including managers about Peggy.

**Knowledge by Doug**

Doug knew or should have known that Peggy was looking for a job at another airline because she resigned her position from World Airlines (WA). It was foreseeable that Peggy would be looking for another job in another airline.

**Act to Induce**

Doug acted by mailing letters to several people who work in the airline industry. Doug also talked about his intents at WA, where Peggy used to work because she heard from people that work there that Doug had mailed letters on July 15.

**Breach**

EA called Peggy on July 25 after they had offered her a job. EA informed Peggy that the offer of employment was revoked. This was after Doug sent the letters out to several people.

### Causing Damages

Doug actions are the cause of Peggy's employment contract getting revoked. Peggy is economically damaged because she is under economic pressure and is delinquent on her mortgage payments. Peggy is also fighting the urge to use cocaine again. Peggy can recover for wages lost and for emotional harm.

### Defenses

Here Doug will argue that there is a duty to inform airlines about Peggy's drug use.

END OF EXAM

→ PUBLIC SAFETY?

↓ BUT THE PRIVILEGE WOULD BE DEFEATED BY ABUSE?

↓  
("FALSEHOODS  
"FREQUENT USER")