

UNIVERSITY OF MISSOURI
SCHOOL OF LAW
ADVANCED TORTS – MITCHELL

Final Examination
Thursday, December 6, 2012
1:30 p.m. – 4:30 p.m.
Instructions

1. You have 3 hours to complete the examination.
2. The final exam is an “open-book” exam, which means that you are allowed to have an outline that you prepared in whole or in part and your notes. The use of commercial outlines, hornbooks, and other similar material is PROHIBITED; possessing such items will result in a violation of the honor code.
3. You may NOT consult with anyone during the exam.
4. You MUST turn in the exam at the end of the allotted time whether you have finished or not.
5. HAND WRITTEN EXAMS: You may write in either pencil or pen (BLUE OR BLACK INK ONLY). Please WRITE LEGIBLY and on only ONE side of a bluebook page. Please number your pages and, if you use more than one blue book, please number your bluebooks. If you forget something, you can insert it on the opposing blank page.
6. Please write a coherent, well-thought and well analyzed essay for each fact pattern that demonstrates your knowledge of the legal issues. READ the question carefully. THINK before you write.
7. Do NOT add facts to create issues not already raised by the facts given. Do not make implicit assumptions. Address all issues raised by the facts in answering the question.
8. Citing cases indicating the rule in your analysis is not required but is helpful.
9. IF you state a rule once, you can refer back to the rule.

Part A

Anna Brown and Kyle Smith competed academically all throughout the first semester of law school. At the end of the Fall, in terms of grade point average, Kyle was number one in the class, outranking Anna by a mere fraction of a point. Anna was determined that she would be number one in the class. During the second semester, word quietly spread throughout the class that Kyle had submitted a research paper that he had purchased online. Secretly, Anna was delighted. The only thing she could think of was that she would finally rank number one, but only if the news reached the school administrators and if they took action. However, neither of those conditions was certain to occur.

Feigning concern for academic standards and the reputation of the school, Anna discussed with her husband, John Hatch, and her best friend, Marcie Reusch, whether she had a duty to report what she knew to Dean Kurtis or the Associate Dean of the law school. John cautioned her not to do anything because she really had no “facts.” Marcie said that the widespread rumor was a “fact” and that she should report it, but that she should do so anonymously.

Anna slid an unsigned letter under the Associate Dean’s office door after hours. Normally, the Associate Dean would have ignored an anonymous complaint, but because these charges concerned the top student in the class the associate dean decided to raise the issue with Dean Kurtis, in order to get directions on whether it was necessary to make some kind of inquiry.

Dean Kurtis told the Associate Dean that the school would be greatly embarrassed if a story came out establishing that the best student had been given credit for a “plagiarized” paper, purchased on the Internet, after the administration knew of that risk. Dean Kurtis instructed the Associate Dean not to convene an Honor Code Committee hearing but instead to make a confidential inquiry to see if Kyle would either admit or deny wrongdoing if confronted with the anonymous report.

The Associate Dean located a cell phone number for Kyle and called him. Kyle did not answer, but a recording of Kyle’s voice said to leave a message. Thinking that only Kyle would pick up messages on Kyle’s cell phone, the Associate Dean said, “Kyle, I have very bad news. There is a rumor circulating on campus that you submitted a plagiarized research paper. I need to talk to you as soon as possible.”

Unfortunately, the message was picked up by Kyle’s roommate, Riley West, who had borrowed Kyle’s cell phone and had been expecting a call. Riley had already heard about the rumor on campus. He neither knew if it was true nor had he discussed the rumor with Kyle. Listening to the Associate Dean’s message impressed Riley with the gravity of the situation. With embarrassment, West relayed the message to Kyle.

Kyle immediately called the Associate Dean, who was not available. Distraught and unwilling to wait until he could reach the Associate Dean, Kyle called Dean Kurtis. He told Dean Kurtis what the Associate Dean had said on the message, and denied that he had purchased a research paper online or submitted anything other than his own work in fulfillment of course requirements. It was later discovered that the rumor was wholly unfounded.

QUESTION: Please discuss whether Kyle Smith has a cause of action and against whom.

Part B

Upon graduation, Kyle Smith thought that he had landed a great job when he was offered a clerkship by a justice of the state supreme court. The pay was low, about one-third of what a top law school graduate could make at a big law firm. But the prestige was high. Clerking for a supreme court justice meant assisting the justice with research and writing in the cases that came before the court, and recommending how disputed issues should be decided. A top-flight judicial clerkship at the state high court was the best credential anyone could earn right out of law school, with and had long-term cachet. After the one year of economic sacrifice, clerks who accepted offers from big firms were phased in at second-year associate salaries and sometimes paid handsome “signing bonuses.” Kyle Smith started working at the court the Tuesday after Labor Day. During the first week, he never came close to thinking about a pending case. The entire four days were taken up with an “orientation” program for the fourteen new clerks who would work for the seven justices on the Supreme Court. The program focused on judicial ethics, online legal research, judicial writing styles, data security, and court protocol.

The following day (Saturday), a story broke in the state’s leading newspaper, The Capital Bulletin, which claimed that several supreme court clerks had accepted obscenely large signing bonuses from large law firms that had cases pending before the state supreme court. It was not clear whether the clerks who were involved were members of the last clerkship “class” (who had just finished their clerkship year) or members of the new clerkship class (who were just starting). The paper did not name names, but it quoted anonymous “reliable sources.” The story quickly triggered a weekend blizzard of criticism that ended up being directed mainly at the justices of the state supreme court, although the justices’ clerks were condemned, too.

Bloggers and talk show hosts had a field day. Kyle Smith received an endless stream of calls and text messages from former classmates wanting to know what was going on. He said that he did not know who was involved, or even whether there was any truth to the allegations. On Monday, Kyle Smith found his picture and photos of the other thirteen new law clerks on the front page of The Capital Bulletin. Apparently the names of the clerks had been assembled from a press release the court had issued about the diversity of the new clerkship class. The photos seemed to have been gathered from Facebook and MySpace, or perhaps from the “Entering Class” booklets that had been published at some of the law schools the clerks had attended. The Monday article stuck to its original story, but it still did not name names as to which clerks had accepted the enormous signing bonuses.

All of his former classmates and professors speculated about whether he was involved in the scandal. Kyle Smith has not yet lined up a post-clerkship job, and he now realizes that it will not be as easy as he thought it would be. Rather than the luster of an honorable Supreme Court clerkship, he will be tainted by association with a corruption scandal.

QUESTION: Please discuss whether Kyle Smith has a viable cause of action against Capital Bulletin.

Part C

After a scathing ABA Report about its lack of diversity, Dean Kurtis informed the faculty and staff that she considered diversifying the student body her highest priority.

Burke, the Director of Admissions, had trouble making progress with diversity. Getting underrepresented students to attend North American Law School was difficult because prospective students would opt for schools that provided more scholarships and fellowships to ease the students' debt burden and were in more attractive locations. Nevertheless, Dean Kurtis was insistent and Burke felt the pressure.

The dilemma became a crisis when North American decided to put out new admissions materials. Burke was told to hire a photographer and put together the best photos of the school and of the students and to make sure the students were clearly visible. A photographer hired by Burke took several excellent photographs. The problem was that the student body did not at all look diverse. Recognizing that fact and the impact it would have on recruitment, Burke asked the photographer to digitally alter one of the images. Using a computer photo-editing program, the photographer did three things.

First, the photographer cut four white-male students out of the picture entirely and replaced their images with images of female and minority students. Second, in one instance where it was too difficult to remove a worker's image entirely, the photographer replaced the head and arms of a white-male student, Kyle Stenlesy with the head and arms of an unknown African-American male, student. Finally, the photographer tinted the faces of three staff members to make them look more "diverse."

The final product was seamless - a beautiful picture of a diverse student body. The admissions material was sent out to prospective students, alumni and displayed in the Admissions Office until the story came to light.

QUESTION: Please discuss whether Kyle has a cause of action against either Burke or the photographer.

Part D

Unable to secure a "BIG LAW" job, Kyle Smith and Riley West started an insurance company in the city of Jackson called S&W Insurance. Eventually, West decided that he wanted to leave Jackson and offered to sell his half of the business to Smith. According to Smith, West stated that he was leaving the area and was moving to the Virgin Islands.

West and Smith agreed that Smith would pay West \$190,000 for his half of the stock of S&W Law. The agreement to sell was drafted by a classmate, Anna Brown. The sales agreement did not contain a covenant on the part of West to refrain from practicing in the area.

After the sale of West's interest to Smith, they agreed that West would remain at S&W Insurance as an employee, for an indefinite period of time, to continue servicing clients who had purchased policies from West. One of the biggest policy holders of S&W Insurance was Guard-Dog, a security agency owned by Mack Ruff, who had also been a close friend of West's for years. Five months after the sale of West's interest to Smith, West announced to Smith that he planned to stop working for S&W Insurance. Soon thereafter, during a visit with Mack Ruff, West told Ruff that he was leaving S&W and

going to work as the head of the insurance division at Anna Brown' firm. While drawing up the documents for the sale, Anna had come across the financials and told West that she would pay him twice what he was now making as well as a share of the profits. A month later, Guard-Dog dropped S&W Insurance and followed West to his new firm. Smith says that if he had known that West would remain in the area, he would never have purchased West's share.

QUESTION: Please discuss whether Kyle Smith has a cause of action and against whom.