

**TORTS MIDTERM  
OCTOBER 2004  
PROFESSOR THOMAS MACK**

This is closed-book exam; you may not possess, use, or even have near you any notes or other materials with writing on them **DO NOT** write your name or identify yourself in any manner other than by placing your exam number on your examination book.

If you use more than one blue book, number the books in sequence ("1 of 3, 2 of 3," etc.) and place your exam number on each book.

Ben throws a party in his condominium apartment high up in a modern high rise building in Miami, Fl. The party is crowded. Ann is among those invited and attending. A tropical storm with strong winds has hit Miami. Around 10:00 p.m., Ben turns on the television and hears that the tropical storm may turn into a hurricane. Ben quickly announces the party is over and people should leave. After numerous protests everyone except Ann does leave. Ben's apartment has steel shutters which he has had installed and which can be closed over all his windows and glass doors. Ann does not have steel shutters in her own apartment an older building next door. She fears the storm howling outside and feels much safer staying at Ben's. She tells Ben she wants to stay. He tells her to get out.

When she refuses, he approaches her to force her to leave. She throws her drink on him to get him to back off. In shock, he does back off temporarily. But after a few minutes he grabs her and tries to shove her out the door of his condo into the common hallway outside. As he is pulling and pushing her to get her out, Ann, hysterical that she may have to face the storm, grabs onto an end table by the living room sofa to prevent his forcing her out. Pulling her causes the table to move, and a very expensive piece of glass artwork falls off the table and shatters. As the art piece hits the floor, a very tiny piece of glass is propelled into Ann's eye. The piece is so small she doesn't even notice it during the fight but, it eventually causes some damage to her eye.

Once outside in the common hallway for that floor's apartments, Ann is determined to get back into Ben's apartment. She calls him on her cell phone and tells him falsely that she broke her ankle when he pushed her out the door and is in excruciating pain and needs to lie down and to call an ambulance and get some pain relief. Believing her, Ben lets her back in, where she lies on his sofa and pretends to call an ambulance. She ask for pain pills. Ben has none but does have some extremely expensive brandy which he ordinarily keeps for himself but now offers her to help kill the pain. Ann drinks almost the entire bottle while she purports to wait for the ambulance.

After an hour or so of Ann lying there on the sofa, and drinking, she begins to look very attractive to Ben and he tells her she might feel better if he can lie down with her and caress her. She rejects this idea but Ben thinks that if she keeps drinking she might change her mind.

After another hour, the storm passes, Ann gets up, calls Ben a fool, and leaves. Before she gets out the door, she becomes nauseous from the brandy. Unable to control it, she vomits on a small oriental rug thinking it will be easier to clean than if she vomits on the carpeting. In fact, it ruins the old, delicate rug. Ben outraged, runs out into the common hallway screaming he will get his revenge on her. Ann is at the staircase down the hall from Ben's apartment door. She is so startled by Ben's sudden behavior that she looks in his direction, thereby missing the first step of the stairs and falls down the staircase, breaking her ankle.

Discuss the potential intentional tort liabilities, if any, between two parties.