

Question I (A) (Tort/Wiretap Claims) (50 points out of 120 total exam points)

intrusion-elements-intentional intrusion-private place/matter-manner highly offensive--(2)
was it a place with a reasonable expectation of privacy - parking lot vs. car----- (4)
offensiveness of conduct - said she was a grief counselor to extract confidences----- (4)
did not reveal she was a reporter, secretly taped conversation----- (3)
trespass - elements - entry onto property in possession of another w/o consent----- (2)
is garage open to public or a private garage for employees/visitors? consent as to car?--(4)
gained access by deception (pretending to be grief counselor)- is permission voided?---(4)
pub disclosure of private facts-elements-discl, private, highly offensive, pub concern---(2)
private facts? highly offensive to reas person? but pub concern defense----- (4)
no duty of loyalty claim because JJ is not really an employee----- (2)
tort damages-emotional distress, damages from publication?----- (3)
wiretap statute-liability for recording-no permission from DD-is conversation private?-(3)
liability for use-newspaper not liable since didn't use video or audio itself----- (3)
liability for use-cable station - use, but did station know or have reason to know?----- (3)
remedy-inj - documentary-pr restraint-heavy presumptn ag validity?legally obtained?--(4)
miscellaneous_____ (3)

Question I (B) (Claim of privilege under Southland Shield Law) (40 points)

Does she qualify for privilege - a journalist? earn substantial part of her income?-full time job as teacher, part time job as journalist, earned \$30,000 from DD story----- (6)
info obtained in course of profess'al activities?did not reveal a reporter,not on assignmt(4)
Qualified privilege overcome in crim case- is info reasonably available from others?---(5)
is JJ's testimony and recording necessary to prove guilt of DD?----- (5)
no promise of confidentiality but statute doesn't turn on existence of confidentiality----(3)
JJ did not witness or record crime and does not possess physical evidence of crime----(3)
alternative sources of protection-1st A-Branzburg-limited source of protection, if any—(4)
state constitution or evid priv-no info provided as to any protections under st const/priv-(2)
fed com law evidentiary privilege-but only qualified priv like statute, not confidential---(5)
miscellaneous_____ (3)

Question II (FCC Anti-Hoax Rule) (30 points)

is anti-hoax rule content based or content neutral?-based on content, but not viewpoint?(3)
type of speech - false, but not libelous, not commercial so fully protected political sp---(4)
Intermediate not strict scrutiny even if content based bec a reg of bdcasting----- (2)
intermediate scrutiny test -narrowly tailored to achieve important government interest--(2)
state interests-public safety-imp even compell'g int-do hoaxes present real risk to safety(3)
narrowly tailored, less restrictive alts(not least rest alt as in strict scrut'),vague?overbd?(3)
alts-disclaimer/warning?-req actual physical harm not foreseeable will unduly alarm---(3)
no safe harbor, it's a 24 hour ban - not a regulation of time so a complete ban----- (2)
liability of WXYZ only if knew or had reason to know - did station know?----- (4)
use of profanity, but not punished for profanity only as hoax - if profanity, larger fine---(2)
miscellaneous_____ (2)