

Personal Injury Practice – Final Exam Fall 2009

Question #1

On May 21, 2009, Connor, Adam, Shamus and Harry saunter into the Law Offices of Robert D. Armano. Attorney Armano calls upon you, his ace associate, to conduct the intake interview. During the interview, you learn that Adam, Shamus and Harry have all been involved in a vicious automobile accident. Their dear friend, Connor, who is not an attorney, has recommended that you hire him to “translate,” since his friends have a heavy Irish brogue that’s virtually impossible for “Americans” to understand. This perplexes you since they seem to speak perfectly understandable English.

For the time being, you place Connor on hold and delve into the facts. Your query unearths the following: On April 23, 2009 at 4:30 p.m., Adam’s 2001 Mercedes C320 (the “C320”), was traveling in an easterly direction along Common Street in Lawrence, MA. At the same time, a classic 1957 Cadillac, operated by Christopher, (but owned by his girlfriend, Adriana,) was traveling in a northerly direction along Jackson Street. As was his usual custom, he had just finished cleaning their apartment, and Adriana thought he deserved to cruise the streets of Lawrence in a “cool ride.” Suddenly though, and without any advanced warning, as the S80 entered the intersection of Common and Jackson Street on a green light, Christopher disregarded a red light, thereby causing the ensuing collision. Apparently, he was preoccupied with his passengers, Tony and Pauly, and didn’t notice that the light had changed. It must have been those 5 shots of Anisette he had before leaving the house. Who knows!? The next thing he knew, badda bing, badda boom, the Caddy was totaled! How would he explain this to Adriana, and who was going to clean the friggin’ apartment now!?

Through your investigation into these facts, you learn that *Safety Insurance Company* insured Adam’s Mercedes C320, and that the *Commerce Insurance Company* insured the Cadillac. **(The Coverage Selection Page for the Mercedes C320 is attached hereto.)** The Part 1 coverage limits, (i.e. Bodily Injury to Others) covering the Cadillac are compulsory, (i.e., 20/40), and the Part 3 coverage (i.e., Uninsured Motorist Coverage) is 100/300. You also learn that while Adam and Shamus both work for Raytheon, Co., Harry is home on leave from the military. Accordingly, Adam and Shamus carry health insurance through HMO Blue, while Harry’s health insurance is covered through a plan sponsored by the U.S. government. Further, you learn that Shamus doesn’t drive, and lives with his mother, Catlin, while Harry drives only tanks, and resides in an Army tent in southern California. Moreover, Shamus tells you that he knows Christopher’s passengers, Tony and Pauly, and relates that “*those two guys are unemployed, live alone at the local YMCA, and do nothing all day but smoke cigars, and bum rides to the “Bing,” their favorite venue for adult entertainment!*” Finally Adam and Shamus relate to you that their treating chiropractor, Dr. Jay, is the best “back cracker” in town, and they aren’t going anywhere else. Dr. Jay isn’t an HMO Blue preferred provider. Adam also laments that his injuries are going to prevent him from mowing his lush, emerald green lawn, and wants to know what you’re going to do about it.

Attorney Armano wants you to explain, to the individuals present, what their various rights and/or liabilities may be. He tells you to be certain to explain to each claimant what provisions of the applicable automobile insurance policy or policies apply to their individual claims. (continued on next page)

Since you're an expert on Massachusetts automobile insurance law, attorney Armano asks you to satisfy his intellectual curiosity by preparing a memorandum on the respective rights and liabilities of Christopher, Pauly and Tony. Assume that *all* parties have medical bills that exceed \$2,000. **Note: Since you don't know what the extent of the parties damages are at this point, be certain to explain to each claimant (Tony, and Pauly included) what the possibilities are if their damages exceed the policy limits.**

Question #2

On January 2, 2009, after a wild night of popcorn, Pepsi and Dick Clark's Rockin' New Year's Eve special, Gepetto Michelangelo Balladucci (a/k/a "Murphy"), showed up for work at the Muppet Puppet Factory, Inc. On his way to work, he couldn't stop thinking about that lousy bench that they assigned to him. You know, the one with the broken leg. He'd complained to the supervisor and sole stockholder, Pinocchio, (who had a nasty reputation as a lying bastard), but his lamentations went unheeded.

Anyhow, on the above date, Murphy arrived at work and heard Pinocchio whistling. As he approached Murphy, Pinocchio threw his arm around Murphy's shoulder and announced that he had turned over a new leaf, and was starting his "new year's revolution!" He promised Murphy that his old bench had been repaired, and was as good as new! Murphy was skeptical, but thought his old boss's wooden heart had really softened, so he gave him the benefit of the doubt and sat at the bench with a renewed sense of mankind. As soon as his bottom hit the bench, however, Murphy fell four feet to the ground, and re-injured his back! As Murphy writhed in pain on the hard ground, his co-employee, Sal, glared in horror and cried inconsolable tears. You see, Sal was a sensitive old softy and had finally seen enough of Pinocchio's antics. Witnesses say Sal never returned to work after that, had has been in psychotherapy ever since. But I digress.

As Pinocchio howled with pleasure, a humiliated Murphy managed to pick himself off the ground, and get himself to the hospital. His treating physician has advised him that he had indeed re-aggravated his old back injury, and would be out of work until further notice, When Murphy notified Pinocchio that he would not be returning to work, he was informed that he (Murphy) would not be getting paid, in any event, since the Muppet Puppet Factory didn't have Workers' Compensation Coverage.

Murphy and Sal have retained your services to handle their claims. They have both presented you with doctor's notes. While Murphy's physician has opined that Murphy is totally disabled, Sal's shrink isn't quite as generous, and has opined that Sal's only partially disabled. Both men have an average weekly wage of \$500.00 per week, and want you to explain their substantive legal rights. They are particularly interested in how these claims work procedurally, and want to know how you'll be compensated since they have no money to pay you. Both gentleman are understandably fighting mad, and expect to be compensated for their pain and suffering as well. They really want you to help them put the wood to Ol' Pinocchio and the Muppet Puppet Factory. Finally, you have since learned that while Sal will likely recover with a year or so, Murphy will be left with a permanent loss of function. Please discuss the rights and liabilities of *all* parties to this unfortunate event. HAVE A HAPPY HOLIDAY SEASON!



Safety Insurance

This Policy Is Issued By:

Safety Insurance Company

ITEM 1 This Policy Is Issued To:

COVERAGE SELECTIONS PAGE

This page and any attached endorsements form a part of your policy.

1 Vehicle Policy

V 05 32252

Massachusetts Personal Automobile
Policy Number

PRV 07

Agent:

(978) 688 -
104 MAIN STREET

A

ITEM 2. This Policy Is Effective From: **OCTOBER 24, 2008** To **OCTOBER 24, 2009**

(12:01 A.M. Eastern Standard Time)

ITEM 3. Description of Your Auto:

D

Auto 001 2001 MERCEDES C320 SEDAN Auto
WDRRF64J01F090095

ITEM 4. This policy provides only the coverages for which a premium charge is shown.

COVERAGES, Parts 1 - 12	AUTO 001				AUTO			
COMPULSORY INSURANCE	LIMITS	DEDUCTIBLE	PREMIUM	ADJUSTED PREMIUM	LIMITS	DEDUCTIBLE	PREMIUM	ADJUSTED PREMIUM
1 Bodily Injury To Others	\$20,000 per person \$40,000 per accident	None	\$ 259		\$ per person \$ per accident	None	\$	
2 Personal Injury Protection	\$8,000 per person	\$ NONE <input type="checkbox"/> Yourself <input type="checkbox"/> Yourself and household members	\$ 85		\$ per person	\$ <input type="checkbox"/> Yourself <input type="checkbox"/> Yourself and household members	\$	
3 Bodily Injury Caused By An Uninsured Auto (Compulsory Limits \$20000 / \$40000)	\$100,000 per person \$300,000 per accident	None	\$ 24		\$ per person \$ per accident	None	\$	
4 Damage to Someone Else's Property (Compulsory Limit \$5,000)	\$100,000 per accident	None	\$ 326		\$ per accident	None	\$	
OPTIONAL INSURANCE								
5 Optional Bodily Injury To Others	\$250,000 per person \$500,000 per accident	None	\$ 193		\$ per person \$ per accident	None	\$	
6 Medical Payments	\$5,000 per person	None	\$ 10		\$ per person	None	\$	
7 Collision	Actual Cash Value *	\$ 500	\$ 791		Actual Cash Value	\$	\$	
8 Limited Collision	Actual Cash Value	\$	\$		Actual Cash Value	\$	\$	
9 Comprehensive	Actual Cash Value	\$ 500	\$ 206		Actual Cash Value	\$	\$	
10 Substitute Transportation	Up to \$ 15 a day, maximum \$ 450	None	\$ 14		Up to \$ maximum a day, \$	None	\$	
11 Towing and Labor	Up to \$ for each disablement	None	\$		Up to \$ for each disablement	None	\$	
12 Bodily Injury Caused By An Underinsured Auto	\$100,000 per person \$300,000 per accident	None	\$ 46		\$ per person \$ per accident	None	\$	
SAFE DRIVER INSURANCE PLAN	CREDIT-STEP	09	\$ - 634		CREDIT-STEP		\$	
	SURCHARGE-STEP		\$		SURCHARGE-STEP		\$	
	PREMIUM		\$ 1320		PREMIUM		\$	
TOTAL PREMIUM							\$	1,320.00

* INCLUDES WAIVER OF DEDUCTIBLE

Discount %	Age 65 and Older	Air bag/Automatic seatbelts	Annual Mileage	Anti-Theft	Multi-Car
AUTO001 -	NO	25%	NO	NO	5%

Identification Numbers of Endorsements Forming a Part of this Policy
M0099S MPY0016

ITEM 5. Place of Principal Garaging

AUTO001 NORTH ANDOVER

ITEM 6. Secured Lender/Lessor-Additional Insured, if Rented Auto

AUTO 005

Driver Information:

Op No.	Operator Name	Date of Birth Mo. Day Yr.	License Number	Lic. State/Country	Date First Licensed Mo. Day Yr.	Driver Training Y-N	Deferred Operator	Operator Status E=Excluded P=Principal O=Occupational				
								Veh 001	Veh	Veh	Veh	
1				MA		N	N	P				
2				MA		N	N	O				

REFER TO OTHER SIDE FOR ADDITIONAL INFORMATION

INSURED

Personal Injury Practice Final Exam – Fall 2005

Question #1

On December 17, 2003, Colin, Clinton, Bush and Nixon, consult with you regarding an automobile accident they were involved in on December 1, 2003. Bush, the owner/operator of the vehicle, (a 2001 Mercedes Benz C320, Mass. Reg. GWESQ.), relates the following: At approximately 4:30 p.m., Bush and the boys were stopped in traffic along Route 28 North in Salem, NH. They were waiting for the light to change so that they could make their way to the Rockingham Mall for a visit with Santa, when suddenly and without any advanced warning, their vehicle was “rear-ended” by a vehicle operated by Saddam Insane.

Bush has learned that Saddam, an Iraqi national, was enjoying an unplanned vacation with his cousin, Osama, at the latter’s home in Methuen, MA, and decided to do some holiday shopping in Osama’s Orange and White, 1985 Chevy Celebrity. Apparently, Saddam didn’t think Osama would protest it if he borrowed the Celebrity since Osama allowed him to drive it in the past and, anyway, Osama wasn’t back home from work yet. Bush relates further that the Salem, NH police department cited Saddam for operating without a license, and following too closely. Simply put, the boys want to know if they have a case, and ask you for advise. Nixon, however, is a cagey one and wants an early Christmas present from you for the privilege of representing him. You explain to Nixon, confidentially, that you’ve spent all your petty cash on gifts, but that you’ll be happy to shave a few points off of your contingent fee. With a wink and a nod, Nixon is on board with the others.

Through your investigation into these facts, you learn that *Safety Insurance Company* insured Bush’s Benz, and that *Amica Insurance Company* insured the Celebrity. (The *Coverage Selections Page* for the Mercedes is attached hereto). The coverages purchased for the Celebrity are compulsory only, i.e. Bodily Injury to Others = 20/40. There are *no* optional coverages! (What did you expect: The thing’s a piece of #@%!!).

You also learn that while Bush and Colin both work for the U.S. government and receive health insurance through CHAMPUS, Nixon and Clinton receive private health insurance coverage through Tufts Health Care, an HMO. You learn further that Colin has a vehicle of his own, insured by *Metropolitan Insurance Company*; Nixon doesn’t drive, and lives alone; and Clinton, (who also doesn’t drive), lives with his girlfriend, Monica. She has a vehicle insured with *Commerce Insurance Company*. All four claimants are receiving acupuncture therapy, but only Nixon and Clinton seem concerned about whether or not Tufts will cover the treatments. Finally, you have information that suggests that Uninsured Motorist coverages within the Metropolitan and Commerce policies are minimal, i.e. 20/40.

After considering all the issues raised above, your firm’s senior partner suggests that you prepare opinion letters for each claimant, and suggests that you explain to each claimant what their various rights and/or liabilities may be. He tells you to be certain to explain to each claimant what provisions of the applicable automobile insurance policy or policies apply to their individual cases. He asks you to prepare a memorandum explaining Saddam’s rights and liabilities as well. Assume that all parties will have medical expenses that exceed \$2,000.00. **NOTE: Since you don’t know what the extent of the parties damages are at this point, be certain to explain to Colin, Clinton, Bush, and Nixon what the possibilities are if their damages should exceed policy limits.**

Question #2

On June 17, 2003, Joseph, a carpenter employed with Finest Framing, Inc., (“Finest”) suffered severe injuries to his left foot after driving a ring nail through the top of said foot while using a Sure-Shot 150 Pneumatic Nail Gun manufactured by Home–Cheapo, Inc. (“Cheapo”). While clutching his foot, he lost his balance, and suffered a laceration to his right cheek after falling into a nail. Finest entered into a contract with Humongous Homes, Inc. (“Humongous”) to provide framing services for 50 new homes within a subdivision owned and controlled by Humongous. Joseph couldn’t believe his luck! He had actually suffered an injury to *the same foot* years before while hiking through Bethlehem with his Wife, Mary. His son, who is now 12 years old, wasn’t born at the time of the first foot injury.

After investigating this matter, you have learned that while Humongous Homes carried Workers’ Compensation coverage for its employees, Finest did not. Moreover, Joseph has produced a physician’s report, dated December 1, 2003, which related the injuries to the left foot and cheek to the June 17, 2003 work injury. Moreover, Joseph’s treating physician opined that “Joseph has not yet reached a medical end result.” The report further noted that “there is a reasonable likelihood that the foot injury will result in some level of permanent nerve damage.” The physician’s note concludes by opining that “Joseph is totally disabled from his usual occupation, and has been so since June 17, 2003. His disability is ongoing.”

After interviewing Joseph, you learn that he is 35 years of age, married with one child. He has been employed as a carpenter for most of his working life, and has an 11th grade education. He earns \$500.00 per week. Joseph also relates that he has a second job at night with Space Hardware, and earns approximately \$250.00 per week from that position. He laments that he has been unable to work at either job since the day of the injury.

Joseph wants you to explain his substantive legal rights. He is particularly interested in how these claims work procedurally, and wants to know how you will be compensated since he has no money to pay you. In fact, he relates that he has not received any income since the day of the injury, and is in financial dire straits. Because of his financial situation, and in light of the pain associated with these injuries, Joseph wants to collect for his pain and suffering as well. Please discuss the rights and liabilities of *all parties* to this unfortunate event.

HAPPY HOLIDAYS!!

Personal Injury Practice Final Exam – Fall 2003

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This page and any attached endorsements form a part of your policy.

This Policy is Issued By:

Safety Insurance Company

ITEM 1. This Policy is Issued To: **BUSH**

1 Vehicle Policy V 05 32252
 AMENDED 02/13/2002
 Massachusetts Personal Automobile
 Policy Number 1827142 PRV 04
 Agent MACDONALD & PANGIONE INS AGCY
 (978) 688 - 6921
 104 MAIN STREET
 NORTH ANDOVER MA 01845

ITEM 2. This Policy is Effective From: **OCTOBER 24, 2003 To OCTOBER 24, 2004** (12:01 A.M. Eastern Standard Time)

ITEM 3. Description of Your Auto: **D**

Auto 001 2001 MERCEDES BENZ C320	Auto 002 2002 FORD EXPLORER SPT UTIL
	1FMDU74E12ZB84167 ADDED VEHICLE

ITEM 4. This policy provides only the coverages for which a premium charge is shown.

COVERAGES, Parts 1 - 12	AUTO001				AUTO002			
COMPULSORY INSURANCE	LIMITS	DEDUCTIBLE	PREMIUM	ADJUSTED PREMIUM	LIMITS	DEDUCTIBLE	PREMIUM	ADJUSTED PREMIUM
1 Bodily Injury To Others	\$20,000 per person \$40,000 per accident	None	\$ 216	-150	\$20,000 per person \$40,000 per accident	None	\$ 216	150
2 Personal Injury Protection	\$8,000 per person	<input type="checkbox"/> Yourself <input type="checkbox"/> Yourself and household members	\$ 61	-42	\$8,000 per person	<input type="checkbox"/> Yourself <input type="checkbox"/> Yourself and household members	\$ 61	42
3 Bodily Injury Caused By An Uninsured Auto (Compulsory Limits \$20000 / \$40000)	\$100,000 per person \$300,000 per accident	None	\$ 19	-13	\$100,000 per person \$300,000 per accident	None	\$ 19	13
4 Damage to Someone Else's Property (Compulsory Limit \$5,000)	\$100,000 per accident	None	\$ 265	-184	\$100,000 per accident	None	\$ 265	184
OPTIONAL INSURANCE								
5 Optional Bodily Injury To Others	\$ per person \$ per accident	None	\$		\$250,000 per person \$500,000 per accident	None	\$ 189	131
6 Medical Payments	\$ per person	None	\$		\$5,000 per person	None	\$	
7 Collision	Actual Cash Value *	\$ 1000	\$ 389	-270	Actual Cash Value *	\$ 1000	\$ 352	244
8 Limited Collision	Actual Cash Value	\$	\$		Actual Cash Value	\$	\$	
9 Comprehensive	Actual Cash Value	\$ 1000	\$ 116	-80	Actual Cash Value	\$ 1000	\$ 81	56
10 Substitute Transportation	Up to \$ 15 a day maximum \$ 450	None	\$ 21	-15	Up to \$ 15 a day maximum \$ 450	None	\$ 21	15
11 Towing and Labor	Up to \$ for each disablement	None	\$		Up to \$ for each disablement	None	\$	
12 Bodily Injury Caused By An Underinsured Auto	\$100,000 per person \$300,000 per accident	None	\$ 43	-30	\$100,000 per person \$300,000 per accident	None	\$ 43	30
SAFE DRIVER INSURANCE PLAN	CREDIT-STEP	09	\$ - 391	271	CREDIT-STEP	09	\$ - 376	-261
	SURCHARGE-STEP		\$		SURCHARGE-STEP		\$	
	PREMIUM		\$ 939	-652	PREMIUM		\$ 882	612
* INCLUDES WAIVER OF DEDUCTIBLE							TOTAL PREMIUM	\$ -40.00

Discount %	Age 65 and Older	Air bag/Automatic seatbelts	Annual Mileage	Anti-Theft	Multi-Car
AUTO001 -	NO	25%	NO	20%	5%
AUTO002 -	NO	25%	NO	NO	NO

Identification Numbers of Endorsements Forming a Part of this Policy
 MPY0016

ITEM 5. Place of Principal Garaging	ITEM 6. Secured Lender/Lessor-Additional Insured, if Rented Auto
AUTO 001 NORTH ANDOVER 005	
AUTO 002 NORTH ANDOVER 005	FIRST ESSEX BAN*296 ESSEX ST LAWRENCE MA 01842

Operator Name	Date of Birth Mo. Day Yr.	License Number	Lic. State/Country	Date First Licensed Mo. Day Yr.	Driver Training Y-N	Deferred Operator	Operator Status: E=Excluded P=Principal O=Occasional			
							Veh 001	Veh 002	Veh	Veh
1			MA		N	N	P			
2			MA		N	Y	O			