MIDTERM EXAMINATION

This is an open book examination. You may use any materials which you have brought with you whether prepared by you or by others. Questions will be weighted equally and you should spend equal amounts of time on each question. Please write legibly, leave a margin on the left-hand side of the page, and start each question on a new page. Use only your social security number to identify your blue book. If you use more than one blue book, make sure that your social security number is on each one and number the blue books (No. 1 of 2," "No. 2 of 2," etc.).

If you are taking this examination at 10:00 A.M., you must enter your social security number in the space above and turn in this white examination paper along with your blue book. This is a temporary measure for examination security purposes only, and this white examination paper will be returned to you.
QUESTION ONE

(Part A counts as two-thirds of this question. Part B counts as one-third of this question).

Marsha Knoblock comes to your law office for assistance. She was referred to you by a women’s shelter in your community. Two days ago she was severely beaten by her husband of thirteen years, Gerald, when he came home from work in a foul mood.

Gerald, she says, has physically beaten her numerous times resulting in bruises and cuts. He has forcibly required her to engage in sexual intercourse when she did not wish to do so. He once broke her left-hand index finger, and now it has a limited range of motion. He has often beaten Marsha in front of her twelve-year-old son Alex and her eight-year-old daughter Sara.

After the beating two days ago, Marsha ran out of the house and drove off in her car. Gerald followed in his truck. When he pulled alongside Marsha at a traffic light, he pointed his hunting rifle at her and ordered her to stop. When she tried to flee, he forced her car off the road and into a ditch. Gerald stopped and beat Marsha again, subduing her. He then drove Marsha home in her car, locked it and her in the garage, and kept the key. The next morning, after Gerald went to work, Marsha packed a suitcase, left home with her daughter, and took a bus to the women’s shelter.

Part A.

What torts? What defenses?

Part B.

Can tort law, as you now understand it, offer anything that helps Marsha? Explain your answer.
QUESTION TWO

Timothy Hay is an artist who creates plexiglass sculptures. His studio was one large rented bay of a multi-bay garage. One morning he entered his studio to find a car parked inside. The car had entered by way of the roll-up garage door. It belonged to Eric Tenspeed who was known to Hay. The car was parked very near to some of Hay's plexiglass sculptures that were about to be shipped to Hay's agent for sale. Tenspeed explained that he had brought his car into the studio to avoid the chill of the morning while attempting to fix some dents in the car. Hay didn't ask Tenspeed to remove the car, and even lent Tenspeed his own dent-puller and showed Tenspeed how to use it.

At that moment, Hay was called to the telephone. From the telephone, Hay could see the studio area but his attention was directed away from Tenspeed as he talked on the telephone. While still on the phone, Hay glanced back towards where Tenspeed was working and saw him "flying through the air-- at least three feet off the ground-- and he landed in the middle of Motif No. 3." [Hay's testimony]. ("Motif No. 3" was a sculpture by Hay). In all, four sculptures were destroyed.

Hay sued Tenspeed for the value of the destroyed sculptures. The case came on for trial before a jury. Hay testified to the above facts. There was no other evidence for Hay. At the close of Hay's testimony, Tenspeed's lawyer moved the judge to direct a verdict in Tenspeed's favor.
In support of the motion, Tenspeed's lawyer argued the well-established rule of tort law that "the mere happening of an accident does not give rise to an inference of negligence." The lawyer pointed out that Hay had not introduced any evidence to show what caused Tenspeed's body to fall or be thrown onto the sculptures. Therefore, said the lawyer, there was no evidence upon which a jury could draw an inference that Tenspeed was negligent.

How should Hay's lawyer respond to this argument?

QUESTION THREE

Printed on the next page is a story that appeared in the April 19, 1999, issue of Time magazine. Relatives of Wendell Williamson's two victims, representing their respective estates, are now suing Dr. Liptzin for wrongful death. Predictably, Dr. Liptzin has filed a motion to dismiss their complaints for failure to state a claim on which relief can be granted. What arguments will Dr. Liptzin make in support of this motion?
A Psychotic Killer Sues His Psychiatrist

The former law student wins a $500,000 judgment—and divides a college town

Everybody you meet in this lovely college town can tell you all about the bloody rampage on Henderson Street. They either witnessed it or know somebody who did. And they hold strong opinions about the deeply disturbed law student at the center of the story who shot two strangers to death, who was found not guilty by reason of insanity—and who then successfully sued his psychiatrist for $500,000 for not taking his psychosis seriously enough.

Though the shootings took place four years ago, they still stir passionate argument at the University of North Carolina and in Chapel Hill, in part because it seems the case won’t go away. Just last week a judge upheld the $500,000 jury award to the killer, Wendell Williamson, now 30. But that decision will be appealed, and other lawsuits are pending. And this week the case will be examined in Santa Rosa, Calif., at a conference of psychiatrists alarmed at the prospect of being held liable for crimes their patients commit.

Most folks in and around Chapel Hill are outraged that Williamson may collect a quarter of a million dollars for each person he killed. “Is there any crime you can commit these days and manage to be blamed for?” Wanda Jackson wrote in a scathing letter to the Raleigh News & Observer. But several jurors in the civil trial have become ardent advocates for better treatment of the mentally ill and visit Williamson at the mental hospital where he is confined. And other townspeople sympathize with Williamson as a promising young man who somehow spiraled into madness.

Williamson was an eagle scout and student-body president in high school and won a scholarship to U.N.C. After graduation he spent an aimless year in New Orleans, where he played guitar in a rock band, smoked marijuana and drank too much. He returned to U.N.C. for law school in 1982 but had trouble concentrating. He also began talking, his mother recalls, “about how he could read people’s minds, and they could read his.” One day, walking near the law school, he started screaming and slapping himself.

He was taken to a hospital psychiatric ward for 10 days of evaluation. During that time, the staff learned that he had his father’s M-1 rifle in his apartment and asked a judge to commit him. But Williamson convinced the judge that he would be fine if he could return to classes. He continued, though, to be haunted by voices, and stalked the campus with a video camera, trying to prove that people were manipulating him with psychic messages. “It occurred to me that I was losing my mind, but it was only a fleeting thought,” Williamson recalls. “I thought the whole mental illness line of thought was just a trick designed to mislead and oppress me.”

In early 1994 Williamson began seeing Dr. Myron Liptzin, a U.N.C. psychiatrist, who found Williamson to be delusional but not schizophrenic. He prescribed antipsychotic medication, and Williamson stopped hearing voices. Liptzin planned to retire in the summer, and says he encouraged Williamson to find a new doctor but admits he didn’t make a specific referral.

Had Liptzin made clear how sick Williamson was and that he had a moral obligation to stay on his medication, Williamson says, he never would have stopped taking the drugs—and never would have found himself on Henderson Street with his father’s M-1 and 600 rounds of ammunition.

On the mild winter afternoon of Jan. 26, 1995, Williamson shot to death, at random, a McDonald’s manager and a popular lacrosse player bicycling home from an accounting class. As pedestrians crouched behind magnolia trees and cars, Williamson exchanged heavy fire with police, until they eventually wounded him in the legs and were finally able to subdue him.

Few were surprised that Williamson was judged insane and acquitted of murder. But when he won his lawsuit against his psychiatrist, much of the state turned against him and the jurors who favored him. Not that Williamson will get much enjoyment from the money. It is unlikely that any doctor will ever release him from the hospital, for fear of liability.

“Once an eagle scout and student-body president, Williamson is writing a book about his illness...”
TORTS
Mr. Martin
March 17, 2003

MIDTERM EXAMINATION
COMPLETE ANSWERS

QUESTION ONE

Part A.

[All American jurisdictions have by now abolished interspousal tort immunity].

Torts. Marsha is the victim of the following intentional torts: (1) Multiple batteries. Every time Gerald beat her, the tort of battery occurred. Forcing sex upon Marsha was also a battery. (2) Multiple assaults. Specifically, pointing the rifle at Marsha and forcing her car off the road were assaults because Marsha reasonably feared that a harmful contact would occur. (3) False imprisonment. Locking Marsha in the garage was false imprisonment. (4) Conversion. Depriving Marsha of the use of her car was conversion, if the deprivation continued for any length of time. (This assumes that the car is really "her" car, not jointly owned by her and her husband). (5) Intentional infliction of emotional distress. Beating Marsha in front of the children was outrageous conduct which inflicted emotional distress upon both Marsha and the children.

Defenses. On the facts of the question, Gerald has no defenses to tort liability except possibly to the false imprisonment claim. The question doesn't say how Marsha got out of the garage. If there were a readily available escape route such as a garage window, which she used, this would be a defense. Gerald might try to assert the defense of consent: since Marsha went on living with him, she consented to what she knew was coming. Given public awareness of battered women's syndrome, it is extremely doubtful that a modern American jury would find that Marsha "consented" to multiple batteries, forced sex, humiliation in front of the children, and the rest of Gerald's torts.

Part B.

Can tort law offer anything that helps Marsha? Unfortunately, the answer to this question is "probably not." It is true that Marsha could sue her husband and get a judgment, possibly a big judgment. But does he have the money? And how will Marsha's lawyer get paid? In all but the wealthiest of families, lawyers' fees would unacceptably deplete the resources available for the
support of family members. If Marsha and Gerald are to establish separate domiciles, they will need more money not less.

Also, it's likely that the marital assets are jointly owned in which case Marsha will be bringing suit to recover what is hers already.

The only thing to be said for fighting it out with Gerald in a tort lawsuit is that Marsha might recover some of her dignity and self-respect when she learns that she can fight back. Otherwise, tort law offers Marsha little help compared to alternatives available in the legal system such as criminal prosecution, restraining orders, legal separation and divorce.

QUESTION TWO

There is no evidence of any intentional tort such as conversion. But was it an accident, or negligence?

The plaintiff, Hay, bears the burden of proving by evidence that Tenspeed's negligence caused the destruction of the sculptures. And, to survive a motion for a directed verdict, Hay must introduce some evidence on each element of the negligence claim. Here Hay has introduced no evidence of breach of duty--no evidence that Tenspeed wasn't acting with reasonable care.

However, certain cases (of which this is one) can go to the jury without direct evidence of negligence. The term res ipsa loquitur (meaning "the thing speaks for itself") originated in a case called Byrne v. Boadle where the facts were much like those in this question. A barrel of flour fell from a second-story hatchway and struck the plaintiff. The plaintiff did not know and could not prove whose negligence caused this to happen. The Court held that it would be up to the defendant to explain. Otherwise the jury could draw an inference of negligence even without direct evidence.

The criteria for res ipsa loquitur are usually said to be these: (1) There is no direct evidence of defendant's negligent conduct. Here Hay did not see, and cannot testify to, what caused Tenspeed's body to go flying through the air. (2) The accident is of a sort that ordinarily does not happen in the absence of negligence. Accidents do happen, but people do not usually crash into artwork unless they have been careless in some way. (3) The instrumentality causing the harm is under the control of the defendant. Tenspeed's body was under nobody's control but Tenspeed's. (4) The plaintiff did not contribute to his own harm. Hay had gone away from the scene of the accident to answer a telephone call. To these is sometimes added: (5) the defendant has superior access to information about the event. If anybody knows what happened, it is Tenspeed.
Since all of the criteria for res ipso loquitur are met, the motion for a directed verdict should be denied. The case should go to the jury which may (but need not) draw an inference that Tenspeed was negligent.

QUESTION THREE

On a motion to dismiss the complaint for failure to state a claim on which relief can be granted, the facts stated in the complaint are assumed to be true. Only issues of law can be argued. Dr. Liptzin will try to get the judge to rule that he had no duty to Williamson’s victims. (Duty is always a question of law). Alternatively, Dr. Liptzin will try to get the judge to rule that no act or omission of Dr. Liptzin can, as a matter of law, constitute the proximate cause of the victims’ deaths.

No duty. Generally, in the common law there is no duty to warn another of hazards which one did not create. There are exceptions. In the Tarasoff case, the Court held that a mental health professional is under a duty to warn identified persons towards whom his or her patient threatens violence. However, the Tarasoff situation is completely different from this one because in this situation the victims were not known or identified either to Dr. Liptzin or, for that matter, to Williamson. They were random members of the general public.

How could Dr. Liptzin warn, or prevent harm to, unknown and random members of the general public? By publishing a full-page newspaper advertisement warning all people to stay away from Williamson? Dr. Liptzin cannot "control" Williamson’s behavior any more than Williamson can control Dr. Liptzin’s behavior. The impossibility of performing a duty is a good reason for the court not to impose one.

Additional reasons for ruling that a mental health professional has no duty towards random members of the general public include the known inaccuracy of predictions of dangerousness, and the adverse consequences on the therapist-patient relationship caused by disclosure of the patient’s confidential information.

No proximate cause as a matter of law. In the Palsgraf case, Cardozo says that proximate cause is sometimes to be decided by the jury, sometimes by the court. In Cardozo’s view, these random members of the general public are "unforeseeable plaintiffs" to whom no duty is owed. Even Andrews would probably say that Williamson’s murders were too remote in time, space and causal sequence to be held to be proximately caused by anything that Dr. Liptzin did or didn’t do. Under traditional proximate cause analysis, the intervening intentional and criminal act of a madman would cut off all previous chains of causation.
Policy reasons. For reasons having to do with the public interest, the judge should rule that Dr. Liptzin cannot be held liable for Williamson's murders. These reasons include the additional crushing liabilities associated with a contrary holding, which will deter people from the practice of psychiatry and other mental health disciplines. Realistically, the only way that a psychiatrist can protect the public from harm is by incapacitating the patient, i.e. by means of involuntary hospitalization. As a matter of public policy, we do not want to increase the incentives to involuntarily hospitalize many people (which is a deprivation of their liberty) in order to prevent harms that may be committed by a few of them.