

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!!