

TORTS
Mr. Martin
March 9, 2012

Examination ID No. _____

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. Question One consists of ten sub-questions which are to be answered on this white examination paper. Questions Two and Three are to be answered in blue books.

Please write legibly, begin each question on a new page, and leave a margin on the left-hand side of the page in your blue book or blue books.

Use only your examination identification number to identify this examination paper and your blue book or blue books. Your examination identification number is the last six digits of your social security number followed by the numerals "59." Thus, if your social security number is 123-45-6789, your examination identification number is 456789-59.

If you use more than one blue book, please be sure that your examination identification number is on each one and number the blue books ("No. 1 of 2," "No. 2 of 2," etc.).

This white examination paper and all blue books must be turned in at the end of the examination. This includes blue books which are entirely blank and also blue books which have been used as scrap paper. Label any scrap blue book with the word, "SCRAP."

QUESTION ONE

Part A

Five multiple choice questions

Answer the following five questions by circling "A," "B," "C," or "D."

Questions 1-2 are based on the following fact situation:

Si was in the act of siphoning gasoline from Neighbor's car in Neighbor's garage and without his consent when the gasoline exploded and a fire followed. Rescuer, seeing the fire, grabbed a fire extinguisher from his car and put out the fire, saving Si's life and Neighbor's car and garage. In doing so, Rescuer was badly burned.

1. If Rescuer asserts a claim against Si for personal injuries, Rescuer will:
 - [A] prevail, because he saved Si's life.
 - [B] prevail, because Si was engaged in converting Neighbor's gasoline.
 - [C] not prevail, because Rescuer knowingly assumed the risk.
 - [D] not prevail, because Rescuer's action was not a foreseeable consequence of Si's conduct.

2. If Rescuer asserts a claim against Neighbor for personal injuries, Rescuer will:
 - [A] prevail, because he saved Neighbor's property.
 - [B] prevail, because he acted reasonably in an emergency.
 - [C] not prevail, because Neighbor was not at fault.
 - [D] not prevail, because Rescuer knowingly assumed the risk.

Questions 3-5 are based on the following fact pattern:

Husband and Wife, walking on a country road, were frightened by a bull running loose on the road. They climbed over a fence to get onto the adjacent property, owned by Grower. After climbing over the fence, Husband and Wife damaged some of Grower's rare plantings which were near the fence. The fence was posted with a large sign which stated, "No Trespassing."

Grower saw Husband and Wife and came toward them with a large watchdog on a leash. The dog rushed at Wife. Grower had intended only to frighten Husband and Wife but the leash broke and, before Grower could restrain the dog, the dog bit Wife.

3. If Wife asserts a claim based on battery against Grower, will Wife prevail?

[A] Yes, because Grower intended that the dog frighten Wife.

[B] Yes, because the breaking of the leash establishes liability under res ipsa loquitur.

[C] No, because Wife made an unauthorized entry on Grower's land.

[D] No, because Grower did not intend to cause any harmful contact upon Wife.

4. If Husband asserts a claim based on assault against Grower, will Husband prevail?

[A] Yes, because the landowner did not have a privilege to use excessive force.

[B] Yes, if Husband reasonably believed that the dog might bite him.

[C] No, if the dog did not come in contact with him.

[D] No, if Grower was trying to protect his property.

5. If Grower asserts a claim against Wife and Husband for damages to his plantings, will Grower prevail?

[A] Yes, because Wife and Husband entered on his land without permission.

[B] Yes, because Owner had posted a “No Trespassing” sign.

[C] No, because Husband and Wife were confronted by an emergency situation.

[D] No, because Grower used excessive force toward Wife and Husband.

Part B

Five short-answer questions

Answer the following questions by writing your answer in the space provided on this paper.

6. A passenger departed on an ocean voyage knowing that it would be a rough trip because of predicted storms. The ship was not equipped with the type of lifeboats required by an applicable statute. The passenger was swept overboard and he drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.

In an action for wrongful death against the ship’s owner brought by the passenger’s representative, what element of the claim is missing?

7. A customer fell and injured himself when he slipped on a banana peel while shopping at a grocer's store. The banana peel was fresh and clean except for a mark made by the heel of the customer's shoe. In an action brought by the customer against the grocer these are the only facts in evidence. The element of the customer's claim that is missing, or in doubt, is:

8. A smoker and a nonsmoker were enjoying their lunches at adjoining tables in a public park. Smoking is not forbidden in the park. When the smoker lit a cigar, the nonsmoker politely requesting that he not smoke, explaining that she had a severe allergy to tobacco smoke. The smoker took a deep drag and blew smoke directly into the nonsmoker's face.

The nonsmoker brought a battery action against the smoker. The element of the nonsmoker's battery action that is missing, or in doubt, is:

9. Walter, a young man, dressed in a tuxedo for his wedding day. Vera, his jealous ex-girlfriend, forced Walter at gunpoint into a tool shed behind her home. She locked Walter in the tool shed. The back of the shed had a window. Walter could have climbed out of the window but, if he did so, he would have gotten his tuxedo covered with mud. Rather than doing that, he banged on the tool shed door, begging Vera to let him out. Three hours later, after the time for the start of Walter's wedding, Vera let him out.

If Walter sues Vera for false imprisonment, what will be Vera's best defense?

10. There is another tort claim that Walter could assert against Vera. It is:

QUESTION TWO

Podsnap bought a new red Toyota Prius from a dealership in Lawrence, Massachusetts. He financed the car with a loan from the Friendly Finance Co. ("Friendly"). The loan agreement provided that, if Podsnap became delinquent in any monthly payment for more than fifteen days, Friendly might repossess the car without notice.

Podsnap was a lawyer who had trouble collecting bills from his clients. So it came about that Podsnap missed first one, then two, then three payments on the Prius. Friendly put the matter into the hands of two of its employees who specialized in repossession, Calhoun and Monsoon.

One morning Calhoun and Monsoon waited for Podsnap outside his office on Essex Street in Lawrence. Calhoun flagged Podsnap down. Hoping Calhoun to be a new client, Podsnap stopped. Monsoon joined Calhoun at the side of Podsnap's car, reached in the window, and turned off the ignition. Monsoon instructed Podsnap to remove himself and his personal property from the car so that it could be repossessed. Podsnap refused to leave the car. Monsoon pulled back his jacket to show the butt of his (properly licensed) .38 special revolver said to Podsnap, "Out of the car or you're dead meat." Podsnap did not move. Calhoun called on his cell phone for a towtruck.

The towtruck arrived and backed up towards the Prius. Podsnap attempted to start his car, but Monsoon climbed into the passenger seat and forced the keys from Podsnap's hand. The towtruck hooked up and raised the front wheels of the Prius.

On Calhoun's orders, the towtruck started away with Podsnap and Monsoon inside the Prius. Podsnap sought to eject Monsoon with a series of well-aimed blows but his attempts to dislodge the reposessor were unavailing. Podsnap then pulled on the parking brake and put the transmission into reverse. The Prius's tires screamed. The towtruck stalled and came to a stop in front of the Lawrence District Court.

The passing public, including several lawyers of Podsnap's acquaintance, gathered around to watch the show. A police cruiser finally arrived. Police Officer Dogberry asked to see Podsnap's driver's license. Unfortunately for Podsnap, it had expired. Dogberry arrested Podsnap and put him in the back seat of the cruiser. With this assistance from the law, Calhoun and Monsoon completed their work to the entire satisfaction of the Friendly Finance Co. The towtruck drove away with the Prius.

What torts? What tort defenses?

QUESTION THREE

In 1891 a mysterious stranger, later determined to be a man named Norcross, visited the New York office of the financier and philanthropist Russell Sage. The stranger was carrying a carpet bag and said that he wanted to see Mr. Sage about some railroad bonds. He claimed to have a letter of introduction from John D. Rockefeller.

When Sage invited the stranger into his office, Norcross handed him the letter. It was typewritten and not the work of John D. Rockefeller. It said: "The bag I hold in my hand contains ten pounds of dynamite. If I drop this bag on the floor the dynamite will explode and destroy this building in ruins and kill every human being in the building. I demand \$1,200,000, or I will drop the bag. Will you give it to me? Yes or no?"

Sage read the letter twice, folded it, handed it back to Norcross, and then started to talk, telling Norcross that he had an engagement with two gentlemen, that he was short of time and, if it was going to take much time, he wanted Norcross to come back later in the day. At the same time Sage was slowly moving towards a clerk in his office named Laidlaw who did not know what was happening. Sage approached Laidlaw on the latter's left side, placed his (Sage's) right hand on Laidlaw's shoulder, took Laidlaw's left hand in his own left hand, and gently moved Laidlaw to his left about eighteen inches until Laidlaw was positioned directly between Sage and Norcross.

At about this time Norcross realized that he was not going to get the money and pulled the fuse on the carpet bag. There was a tremendous explosion which wrecked the whole building. Norcross was blown to bits. Laidlaw was injured. Russell Sage, however, was completely unharmed.

Laidlaw sued Sage. What result? Why?

[Note No. 1. This is a Torts question. Ignore any worker's compensation law which might, today, affect the result].

[Note No. 2. This is a true story].

* * *

REMEMBER, THIS WHITE EXAMINATION PAPER AND ALL BLUE BOOKS MUST BE TURNED IN AT THE CLOSE OF THE EXAMINATION. THIS INCLUDES BLUE BOOKS THAT ARE ENTIRELY BLANK, AND ALSO BLUE BOOKS THAT HAVE BEEN USED AS SCRAP PAPER. LABEL ANY SCRAP BLUE BOOK WITH THE WORD, "SCRAP."

TORTS
Mr. Martin
March 23, 2012

MIDTERM EXAMINATION
COMPLETE ANSWERS

QUESTION ONE

Part A.

1. B
2. C
3. A
4. B
5. A.

Part B.

6. Causation.
7. Breach (credit given for “constructive notice”).
8. Contact.
9. A reasonable means of escape existed.
10. Assault OR intentional infliction of emotional distress.

QUESTION TWO

When Monsoon ordered Podsnap out of the car and flashed his handgun, Monsoon assaulted Podsnap if the later apprehended that a harmful or offensive contact might imminently follow.

When Monsoon reached into the car and turned off the ignition, it could be argued that Monsoon trespassed on Podsnap's chattel. Alternatively, it could be argued that this was a battery upon Podsnap, a harmful or offensive contact with an object closely associated with Podsnap's person.

When Monsoon forced the keys from Podsnap's hand, this was another battery.

When Monsoon took the keys away from Podsnap, Monsoon effectively seized the car. If there were any doubt that seizing the keys equals seizing the car, Monsoon and Calhoun physically seized the car by means of the towtruck. This was conversion. Monsoon and Calhoun were not in "fresh pursuit" of goods wrongfully taken because Podsnap, even if delinquent on his payments, was in rightful possession of the car. Friendly's right to recover the car does not include the right to recover by means of a breach of the peace. [Casebook p. 116, notes 5, 6 and 7; UCC s. 9-503]. It is true that Podsnap consented to repossession of the car in the loan agreement, but Podsnap did not consent to repossession by means of force and violence upon his person.

When the towtruck drove away with Podsnap inside, this was false imprisonment unless Podsnap had a reasonable means of escape. Possibly Podsnap could have exited the car whenever the towtruck stopped at a red light.

If Podsnap's "well aimed blows" found their target, this was a battery upon Monsoon. Podsnap could claim (with doubtful likelihood of success) a privilege of self-defense and a privilege to defend property.

Because Calhoun and Monsoon intended to cause, and actually did cause, Podsnap to be publicly humiliated in front of his peers at the courthouse, Podsnap could claim the tort of intentional infliction of emotional distress.

If driving with an expired license is not an arrestable offense in Massachusetts, then officer Dogberry falsely arrested Podsnap.

QUESTION THREE

There would be a question of battery by Sage. His actual hands-on touching of Laidlaw was intentional but probably not perceived as harmful or offensive. If, however, Sage were “substantially certain” that the dynamite would explode, it could be argued that the explosion itself supplies the element of harmful or offensive contact.

More likely Laidlaw would sue on a negligence theory. Negligence requires consideration of five elements.

1. Duty. Ordinarily in the common law there is no duty to initiate action to rescue another. Sage had no duty towards Laidlaw just because Sage and Laidlaw were confronted by the threat of Norcross’s bomb. However, Sage did something, not nothing. Under those circumstances, it could be argued that Sage had a duty not to make the situation worse. A duty on Sage’s part towards Laidlaw could also be found (as some cases hold) in the employer-employee relationship.

2. Breach. If Sage owed Laidlaw a duty, breach of duty could be found because Sage failed to take reasonable steps to minimize harm to Laidlaw. [Query: Should he have jumped in front of Laidlaw? What would you have done?]. Sage could defend that his action was impulsive and taken in an emergency. Or he could cite “self-preservation, the highest law of nature,” in his defense.

3. Causation in fact. This is the weakest link in the chain. The explosion was in fact caused by Norcross. There is little doubt that, “but for” Sage’s shielding himself behind Laidlaw’s body, Sage would have been injured or killed alongside Laidlaw. It’s not the same to assert, however, that “but for” Sage’s actions Laidlaw would not have been injured. There is no evidence to warrant an inference that Laidlaw would not have been equally injured had he been standing eighteen inches to his right, in the place from which Sage removed him.

4. Proximate cause. Ordinarily the criminal act of a third party (Norcross) is an intervening cause which cuts off the liability of others for negligence.

5. Damages. If Laidlaw succeeds in proving negligence against Sage, Sage will be deemed a concurrent tortfeasor along with Norcross. Since Laidlaw’s injuries are indivisible, Sage will be liable for the full amount of Laidlaw’s damages.

—[The question was derived from Laidlaw v. Sage, 158 N.Y. 73, 52 N.E. 679 (1899)].

W/2011

TORTS

Mr. Martin

March 11, 2011

Exam ID No. _____

MIDTERM EXAMINATION

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QUESTION ONE

IN EACH OF THE FOLLOWING QUESTIONS, FILL IN THE BLANKS:

Question 1. The elements of the tort claim called “battery” are:

1. _____, and
2. _____

Question 2. The elements of the tort claim called “assault” are:

1. _____
2. _____, and
3. _____

Question 3. The elements of the tort claim called “conversion” are:

1. _____
2. _____
3. _____, and
4. _____
- _____

Question 4. The elements of the tort claim called “negligence” are

1. _____
2. _____
3. _____, and
4. _____

Question 5. When Denton heard that his neighbor, Prout, intended to sell his home to a minority purchaser, Denton told Prout that Prout and his wife and children would meet with “accidents” if he did so. Prout then called the prospective purchaser and told him that he was taking the house off the market.

Prout asserts a claim against Denton for assault. The element of Prout’s assault claim that is missing from the above fact pattern, or in doubt, is:

Question 6. Plummer, a well-known politician, was scheduled to address a large crowd at a political dinner. Just as he was about to sit down at the head table, Devon pushed Plummer’s chair to one side. As a result, Plummer fell to the floor. Plummer was embarrassed at being made to look foolish before a large audience but suffered no physical harm.

Plummer asserts a claim against Devon for battery, seeking damages on account of embarrassment. The element of Plummer’s claim of battery that is missing from the above fact pattern, or in doubt, is:

Question 7. Passer was driving his pickup truck along a lonely road on a very cold night. Passer saw Tom, who was a stranger, lying in a field by the side of the road and apparently injured. Passer stopped his truck, alighted, and, upon examining Tom, discovered that Tom was intoxicated and in danger of suffering from exposure to the cold. However, Passer returned to his truck and drove away without making any effort to help Tom. Tom remained lying at the same place and was later injured when struck by a car driven by Traveler who, drowsy and inattentive, had veered off the road into the field and hit Tom. Traveler did not see Tom prior to hitting him.

Tom asserts a negligence claim against Passer for damages for his injuries. The element of Tom's negligence claim that is missing from the above fact pattern, or in doubt, is:

IN EACH OF THE FOLLOWING QUESTIONS,
CHOOSE THE BEST ANSWER

Question 8. Owner brought his television set to Repairer for repair. Repairer repaired, but did not deal in, television sets. Repairer sold the set to Buyer. Buyer believed that Repairer owned the set.

If Owner asserts a conversion claim against Repairer and Buyer, Owner will prevail against

- (A) Repairer but not Buyer, because Buyer was a good faith purchaser.

(B) Both Repairer and Buyer, because each exercised dominion over the television set.

(C) Buyer but not Repairer, because Repairer no longer has possession of the television set.

(D) Buyer but not Repairer, because Repairer had lawful possession of the television set.

Question 9. Craig brought a medical malpractice suit against Howard, a board-certified physician. At trial, Craig's entire evidence consisted of the following: (1) Craig first went to Howard because of severe abdominal pains and bloody diarrhea; (2) After several examinations, Howard recommended corrective surgery on Craig's large intestine; (3) After adequate advice from Howard, Craig gave informed consent to the surgery which Howard had recommended, and the surgery was performed; (4) Starting almost immediately after the surgery, and to the present day, Craig continues to have severe abdominal pains and bloody diarrhea.

After establishing these facts, Craig rested. Howard moved for a directed verdict. Which of the following statements is most correct?

(A) Howard's motion should be denied because whether Howard failed to exercise the standard of care of a practitioner in his specialty is a jury question.

(B) Howard's motion should be denied because the facts present a case of res ipsa loquitur.

(C) Howard's motion should be granted if the judge determines that Howard will most likely prevail at trial.

(D) Howard's motion should be granted because Craig introduced insufficient evidence to support a claim of medical malpractice.

Question 10. Chuck obtained a permit to cut firewood in the national forest. He drove his pickup to the designated area and began to cut down a marked tree with his new axe. Chloe, a member of the Green Militant movement, approached Chuck and berated him for cutting the tree. (Green Militants advocate a total ban on the killing of plants). Chuck told her that he had a permit to cut, and to leave him alone. Chloe persisted, however, shouting “Plantkiller!” Intending to frighten Chloe, Chuck swung his axe as if to strike her. The manufacturer of the axe had neglected to insert the metal wedge that secures the handle to the blade, and Chuck’s earlier chopping had loosened the head. The axe head flew off the handle, striking Chloe and breaking her clavicle.

If Chloe brings an action for battery against Chuck, will she recover?

- (A) No, if a reasonable person would have been angered by Chloe’s statements.
- (B) No, because the defective axe was the cause in fact of Chloe’s injury.
- (C) Yes, because Chuck intended to frighten Chloe.
- (D) Yes, unless she intended to provoke Chuck.

QUESTION TWO

The United States Coast Guard removes obstructions from the navigable waters of the United States. Pursuant to a federal law known as the Wreck Act (33 U.S.C. s. 409), the United States may collect from a shipowner the cost of raising and removing a wrecked vessel which obstructs navigation, where the vessel sank as a result of the shipowner’s negligence.

The bulk carrier M/V [Motor Vessel] Maritime Nexus left Pensacola, Florida, for New Orleans loaded with 10,000 tons of scrap iron. At nine o'clock on a clear morning, about halfway across Mobile Bay when the ship was in a marked channel with ample water under the keel, it suddenly buckled amidships and broke apart. It sank in the channel with its buckled midsection resting on the bottom and its bow and stern rising above the surface. In this posture it constituted a hazard to navigation and the Coast Guard removed it at a cost of \$2,000,000.

The Coast Guard investigated the sinking. The investigators, who included expert naval architects and engineers retained for the purpose, determined that no collision with another vessel had occurred and that the ship had not grounded on the bottom of the channel. They found that the Maritime Nexus had departed Pensacola with its radar inoperative at distances greater than one mile and its tachometer not functioning, both of these conditions violating Coast Guard regulations. The investigators were not, however, able to come to a conclusion as to the cause of the sinking.

The United States sued the Maritime Nexus's owners to recover \$2,000,000, the cost of raising and removing the ship. On these facts, what result? Why?

[Note: This is a Torts question. No knowledge of maritime law is assumed or required on your part.]

QUESTION THREE

Thinwhistle bought a small uninhabited island in Sandy Bottom Lake in Maine with the idea of building a vacation cottage. All he was able to afford, however, was an outhouse and a tent site. Thinwhistle rowed his

boat to the island one day for the purpose of setting up his tent and spending the night.

For many years property owners from the lakeshore, and others, had visited the island to picnic, pick blueberries, and fish. So it happened that, as Thinwhistle was approaching the island, he saw another rowboat beached on the shore. The boat had bought Hope and Dope, a young couple, to the island to picnic and who knows what else. Thinwhistle was annoyed to find somebody else's boat on his island. He set the boat adrift.

Hope and Dope appeared on the shore a moment later. They shouted some most unpleasant expletives at Thinwhistle, who backed his boat into the lake. Dope threw a rock, trying to hit Thinwhistle's boat, but missed and hit Thinwhistle. Realizing that they were marooned, Hope and Dope swam to Thinwhistle's boat and tried to climb in. They grabbed onto the gunwales of the boat and, in their efforts to get in, succeeded in overturning it. Hope and Dope were strong swimmers who swam the half mile to safety on the shore of Sandy Bottom Lake. Thinwhistle, however, drowned.

What tort claims? What defenses?

END OF EXAMINATION

REMEMBER TO TURN IN ALL BLUE BOOKS.

THIS INCLUDES BLANK BLUE BOOKS AND SCRAP BLUE BOOKS.

LABEL ANY SCRAP BLUE BOOK WITH THE WORD "SCRAP."

TORTS
Mr. Martin
March 28, 2011

MIDTERM EXAMINATION
COMPLETE ANSWERS

QUESTION ONE

Question 1. The elements of the tort claim called “battery” are:

1. Intent.
2. Harmful or offensive touching.

Question 2. The elements of the tort claim called “assault” are:

1. Intent.
2. Plaintiff’s apprehension.
3. Of an imminent harmful or offensive touching.

Question 3. The elements of the tort claim called “conversion” are:

1. Volitional and wrongful.
2. Exercise of dominion and control.
3. Over chattel property as to which plaintiff has the right of possession or ownership.
4. So substantial that defendant should be required to pay plaintiff the full value of the property.

Question 4. The elements of the tort claim called “negligence” are:

1. Duty.
2. Breach.
3. Causation:
 - a. cause in fact;
 - b. “proximate” or “legal” cause.
4. Damages.

Question 5. When Denton heard that his neighbor, Prout, intended to sell his home to a minority purchaser, Denton told Prout that Prout and his wife and children would meet with “accidents” if he did so. Prout then called

the prospective purchaser and told him that he was taking the house off the market.

Prout asserts a claim against Denton for assault. The element of Prout's assault claim that is missing from the above fact pattern, or in doubt, is:

"imminent" harmful or offensive touching

Question 6. Plummer, a well-known politician, was scheduled to address a large crowd at a political dinner. Just as he was about to sit down at the head table, Devon pushed Plummer's chair to one side. As a result, Plummer fell to the floor. Plummer was embarrassed at being made to look foolish before a large audience but suffered no physical harm.

Plummer asserts a claim against Devon for battery, seeking damages on account of embarrassment. The element of Plummer's claim of battery that is missing from the above fact pattern, or in doubt, is:

Intent

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Tom asserts a negligence claim against Passer for damages for his injuries. The element of Tom's negligence claim that is missing from the above fact pattern, or in doubt, is:

duty or causation

IN EACH OF THE FOLLOWING QUESTIONS,
CHOOSE THE BEST ANSWER

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- (A) Repairer but not Buyer, because Buyer was a good faith purchaser.
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- (C) Yes, because Chuck intended to frighten Chloe.
- (D) Yes, unless she intended to provoke Chuck.

QUESTION TWO

To construct a prima facie case of negligence on the part of the shipowner, the United States must produce some evidence on each element of a negligence case: duty, breach, causation and damages. The big problem for the United States is that it has no evidence of causation, because the experts retained by the Coast Guard could not conclude that the breakup of Maritime Nexus was caused by breach of duty on the part of the shipowner or anybody else.

It is true that Maritime Nexus was in violation of Coast Guard regulations with respect to its radar and its tachometer. This would be negligence per se if (1) the harm that occurred (a maritime casualty) was of the kind that the regulations were intended to prevent (which it was) and (2) if the plaintiff United States is of the class that the regulation was intended to protect (which is more doubtful). However, negligence per se, while it proves duty and breach, does not dispense with the need for evidence of causation which, once again, the United States lacks.

On the other hand the principle of proof called res ipsa loquitur does enable the United States to avoid the requirement for prima facie evidence of causation. To invoke res ipsa loquitur the United States must show: (1) The accident does not ordinarily happen in the absence of somebody's negligence. Ships do not ordinarily break apart in calm water unless there has been negligence in design, inspection, maintenance, overloading or load maldistribution. The United States must also show: (2) The defendant was in sole control of the instrumentality causing harm. Here, the shipowner, through its captain and crew, was in sole control of Maritime Nexus. Finally, the United States must show: (3) That it (the United States) had nothing to do with the happening of the accident, which is self-evident.

QUESTION THREE

1. Hope and Dope v. Thinwhistle's estate. When Thinwhistle set the boat adrift, he trespassed on their chattel because he dispossessed them of it. If the boat is never recovered, the tort is conversion. By setting the boat adrift Thinwhistle confined Hope and Dope to the island without a reasonable means of escape. This is false imprisonment. Thinwhistle's conduct was extreme and outrageous, incomprehensible except as intended to bully Hope and Dope by putting them in his power, and an intentional infliction of emotional distress.

2. Thinwhistle's defense. Thinwhistle's estate would respond that he was defending his property against trespassers. The force he used, however, was unreasonable because it was not directed to the ejection of the trespassers. (In fact, it was the reverse because it made Hope and Dope unable to cease their trespass) .

3. Thinwhistle's estate v. Hope and Dope. Hope and Dope entered Thinwhistle's island. This was trespass to land, unless the land is open to the public by reason of an easement by prescription, or unless Maine law requires posting the land "No Trespassing." Words alone are not an assault, but when Dope threw the rock at Thinwhistle's boat, he assaulted Thinwhistle if the latter saw Dope throw the rock. When the rock hit Thinwhistle it was a battery by transferred intent. When Hope and Dope swam towards Thinwhistle's boat, Thinwhistle had reason to fear a harmful or offensive touching of his person. This was assault. When Hope and Dope displaced Thinwhistle from his boat it was [negligence] [battery] [conversion] [trespass to chattel] [credit given for any].

4. Hope's and Dope's defenses v. Thinwhistle's estate. Hope and Dope could claim to have acted in self defense or necessity because Thinwhistle's boat was their only means of escape from the island. If the claim is negligence, Hope and Dope could defend that they were acting in an emergency without time to plan a safer course of action. Finally, Hope and Dope could defend that Thinwhistle was contributorily or comparatively negligent because he set in motion the entire sequence of events by setting Hope's and Dope's boat adrift.