TORTS
Mr. Martin
Spring 2015 Exam ID no.:_____

MIDTERM EXAMINATION

This is a closed book examination. You should have this exam booklet, a Scantron card, and a bluebook. This booklet contains fifteen multiple-choice questions. When you have determined your answers to the fifteen multiple-choice questions, you are to transcribe the answers ("A," "B," "C," or "D") into the spaces numbered 1 to 15 on the Scantron card. This booklet also contains five questions that require you to write a short answer. You should answer the five write-in questions contained in this booklet directly in the spaces provided. Finally, this exam booklet also contains one essay question. You should write the answer to the essay question in the bluebook.

The time allowed for this examination is seventy-five minutes (one hour and fifteen minutes). Questions will be weighted in accordance with the amount of time suggested for each question.

Please use only your Exam ID number to identify this answer booklet, your Scantron card, and your blue book. All three must be turned in at the close of the examination. You Exam ID number is the last six digits of your social security number followed by the numerals "59."

Relax and try to have some fun.

000030

PART I
FIFTEEN MULTIPLE-CHOICE QUESTIONS
(suggested time: forty-five minutes)

Question 1.

Defendant was camping by himself in Great Forest. One night, he drank a six-pack of beer and, in his impaired state, negligently knocked a can of gasoline into his campfire. Although Defendant survived, he could not control the blaze and ran for help.

At another campsite in Great Forest, at the same time, an unknown camper was sitting around his campfire smoking a cigarette. Finishing the cigarette, he negligently flicked the burning butt into a pile of dried brush. Upon seeing that the cigarette started a fire, the unknown camper ran for the hills, never to be heard from again.

By the time the two fires met, they had obtained equal magnitude. When joined, the fire doubled in size and kept spreading. The combined fire destroyed Plaintiffs cottage. Plaintiff sued Defendant for the destruction of the cottage. Which of the following describes Defendant's liability to Plaintiff?

(A) Defendant is liable only if either fire alone would have destroyed Plaintiff's cottage.
(B) Defendant is liable only if neither fire alone would have destroyed Plaintiff's cottage.
(C) Defendant is liable.
(D) Defendant is not liable.

Questions 2-4 are based on the following fact situation.

Emp, an employee at the Ajax plant, was stopped at the gate of the plant by strikers who had formed a picket line. During the ensuing argument, Pick, one of the striking employees, kept hitting the hood of Emp's automobile with a rubber hose. When Emp refused to turn back, Pick picked up a brick and came running at Emp's automobile from the front while shouting: "Get out of here, you scum, or I'll let you have it!" Quickly, Emp drove the automobile straight at Pick. Pick leaped out of the way, but the automobile accidentally struck Gard, a security guard, who had

suddenly come up behind Pick in an attempt to prevent him from throwing the brick.

Question 2.

In an action by Emp against Pick for assault for Pick's conduct with the brick,

(A) Emp will prevail provided Pick intended to throw the brick.
(B) Pick will prevail because no physical harm was suffered by Emp.
(C) Emp will prevail because Pick intended to cause Emp apprehension of bodily harm.
(D) Pick will prevail because Emp knew that he would not be hit with the brick as long as he turned back.

Question 3.

Assuming Emp was privileged to drive his auto at Pick, in an action by Gard against Emp.

(A) Gard must prove negligence on Emp's part.
(B) Gard will recover from Emp in negligence under the doctrine of transferred intent.
(C) Gard will recover from Emp in battery under the doctrine of transferred intent.
(D) Gard cannot recover, because Emp acted in an emergency situation.

Question 4.

In an action by Emp against Pick for trespass to his automobile, the trial judge should:

(A) direct a verdict for Pick, because Emp's proper claim should be for conversion.
(B) rule that Emp may proceed either in a claim for trespass or a claim for conversion.
(C) direct a verdict for Pick unless Emp presents evidence of some damage to his automobile.
(D) direct a verdict for Emp on the issue of liability.

Questions 5 and 6 are based on the following fact situation:

Peaches and Mike were passengers sitting in adjoining seats on a Defendant Airlines flight. There were many empty seats on the aircraft.

During the flight an air concierge (formerly called stewardess) served Mike nine drinks. As Mike became more and more obviously intoxicated, he attempted to engage Peaches in conversation. Peaches chose to ignore him. This angered Mike, who suddenly struck Peaches in the face giving her a black eye.

Question 5.

If Peaches asserts a claim for damages against Defendant Airlines based on negligence, Peaches will

(A) not recover, because a person is not required by law to come to the assistance of another who is imperiled by third party.
(B) not recover, if Peaches could easily have moved to another seat.
(C) recover, because a common carrier is strictly liable for injuries suffered by a passenger while aboard the carrier.
(D) recover, if the air concierge should have perceived Mike's condition and acted to protect Peaches before the blow was struck.

Question 6.

If Peaches asserts a claim for damages against Defendant Airlines based on battery, she will

(A) prevail, because she suffered an intentionally inflected harmful or offensive contact.
(B) prevail, if the air concierge acted recklessly in continuing to serve liquor to Mike.
(C) not prevail, because Mike was not acting as an agent or employee of Defendant Airlines.
(D) not prevail, unless she can establish some permanent injury from the contact.

Question 7.

Doe negligently caused a fire in his house, and the house burned to the ground. As a result the sun streamed into Peter's yard next door, which previously had been shaded by Doe's house. The sunshine destroyed delicate and valuable trees in Peter's yard which could survive only in shade. Peter has brought a negligence action against Doe for the loss of Peter's trees. Doe has moved to dismiss the complaint.

The best argument in support of this motion would be that:

(A) Doe's negligence was not the active cause of the loss of Peter's trees.
(B) Doe's duty to avoid the risks created by a fire did not encompass the risk that sunshine would damage Peter's trees.
(C) the loss of the trees was not a natural and probable consequence of Doe's negligence.
(D) Peter suffered a purely economic loss, which is not compensable in a negligence action.

Question 8.

While Driver was taking a leisurely spring drive, he momentarily took his eyes off the road to look at some colorful trees in bloom. As a result, his car swerved a few feet off the roadway directly toward Walker, who was standing on the shoulder of the road waiting for a chance to cross. When Walker saw the car bearing down on him he jumped backwards, fell, and injured his knee.

Walker sued Driver for damages and Driver moved for summary judgment. The foregoing facts are undisputed.

Driver's motion should be

(A) denied, because the record shows that Walker apprehended an imminent harmful contact with Driver's car.
(B) denied, because a jury could find that Driver negligently caused Walker to suffer a legally compensable injury.
(C) granted, because the proximate cause of Walker's injury was his own voluntary act.
(D) granted, because it is not unreasonable for a person to be distracted momentarily.

Question 9.

The state of Rhubarb has retained the common-law categories of trespasser, licensee, and invitee. Muskrat, a wealthy resident of Rhubarb, decided to excavate a large stretch of his property in back of his house in preparation for installing an in-ground swimming pool. He did not illuminate the excavation or post a warning sign. Muskrat's land is not fenced and, although he has not noticed trespassers on his property, he has done nothing to keep them away. One night, trespasser Tom took a shortcut through Muskrat's land to hurry home before midnight. Tom fell into the excavation and was injured.

An action by Tom against Muskrat should

(A) fail, because Tom assumed the risk.
(B) fail, because Tom was not a known trespasser.
(C) succeed, because it was negligent for Muskrat not to illuminate his property or to warn visitors.
(D) succeed, because Tom's trespassing was foreseeable.

Question 10.

Plaintiff entered a hospital for a knee operation, after having been informed that there was a one percent chance of infection in the procedure. After Plaintiff's knee became infected, he sued, alleging negligence on the part of Defendant, the surgeon. Plaintiff, relying upon *res ipsa loquitur*, produced no expert testimony. Defendant moved for a directed verdict. The trial judge should:

(A) grant the motion, because Plaintiff had been warned of the one percent chance of infection.
(B) grant the motion, because Plaintiff produced no expert testimony.
(C) deny the motion, because *res ipsa loquitur* eliminates the need to produce expert testimony.
(D) deny the motion, because the infection is such a rare occurrence (one percent) that, when it occurs, a jury may find, without expert testimony, that it is more likely due to the surgeon's negligence than some other cause.

Questions 11-13 are based on the following fact situation:

Dora, who was eight years old, went to the grocery store with her mother. Dora pushed the grocery cart while her mother put items into it. Dora's mother remained near Dora at all times. Peterson, another customer in the store, noticed Dora pushing the cart in a manner that caused Peterson no concern. A short time later, the cart Dora was pushing struck Peterson in the knee, inflicting serious injury.

Question 11.

If Peterson brings an action, based on negligence, against the grocery store, the store's best defense will be that

(A) a store owes no duty to its customers to control the use of its shopping carts.
(B) a store owes no duty to its customers to control the conduct of other customers.
(C) any negligence of the store was not the proximate cause of Peterson's injury.
(D) a supervised child pushing a cart does not pose an unreasonable risk to other customers.

Question 12.

If Peterson brings an action, based on negligence, against Dora's mother, will Peterson prevail?

(A) Yes, if Dora was negligent.
(B) Yes, because Dora's mother is responsible for any harm caused by Dora.
(C) Yes, because Dora's mother assumed the risk of her child's actions.
(D) Yes, if Dora's mother did not adequately supervise Dora's actions.

Question 13.

If Peterson brings an action, based on negligence, against Dora, Dora's best argument in defense would be that

(A) Dora exercised care commensurate with her age, intelligence, and experience.
(B) Dora is not subject to tort liability.
(C) Dora was subject to parental supervision.
(D) Peterson assumed the risk that Dora might hit Peterson with the cart.

Question 14.

While Patty was riding her horse on what she thought was a public path, the owner of a house next to the path approached her, shaking a stick and shouting, "Get off my property." Unknown to Patty, the path on which she was riding crossed the private property of the shouting owner. When Patty explained that she thought the path was a public trail the man cursed her, approached Patty's horse, and struck the horse with the stick. As a result of the blow the horse reared, causing Patty to fear that she would fall. However, Patty managed to stay on the horse, and then departed. Neither Patty nor the horse suffered bodily harm.

If Patty brings an action for damages against the property owner, the result should be for

(A) Patty, for trespass to her chattel property.
(B) Patty, for battery and assault.
(C) the defendant, because Patty suffered no physical harm.
(D) the defendant, because he was privileged to exclude trespassers from his property.

Question 15.

Defendant negligently injured Plaintiff, causing a cut on Plaintiff's forehead which did not heal. Two years later, Plaintiff consulted a specialist in skin diseases, and was informed that he had skin cancer at the point of the injury. In Plaintiff's action against Defendant to recover damages for the skin cancer,

(A) Plaintiff will not recover unless a qualified expert testifies that the cancer was probably caused by the injury.
(B) Plaintiff will not recover unless Defendant could reasonably foresee that skin cancer could result from an injury to Plaintiff, and a qualified expert testifies that the cancer was probably caused by the injury.

(C) Plaintiff will not recover unless Defendant could reasonably foresee that serious harm could result to Plaintiff from Defendant's conduct, and a qualified expert testifies that the cancer was probably caused by the injury.

(D) Plaintiff will not recover unless a qualified expert testifies that there is a reasonable possibility that the cancer was caused by the injury.

PART II—FIVE FILL-IN-THE-BLANKS QUESTIONS

(suggested time: ten minutes)

Question 1.

Dandy went to the lumber yard late on a Saturday afternoon to purchase some plywood. He went to the shed at the back of the yard where the plywood was kept. While Dandy was looking over the plywood, time passed. Watchman, whose duty it was to close up the yard, closed and locked the only gate because it was closing time and he believed that all the employees and customers were out of the yard. Dandy realized that he was locked in the lumber yard until Monday. The lumber yard was enclosed by a twelve-foot-high chain link fence topped with razor wire.

Dandy brings an action for false imprisonment against the lumber yard. On the foregoing facts, the element that is missing from Dandy's false imprisonment claim is:

_____

Question 2.

Before a large group of their friends, Gidget came up behind Tiffany, grabbed her by the hair, and accused Tiffany of having an affair with Gidget's husband. The accusation was false, but Gidget believed it to be true. Tiffany was annoyed.

Tiffany brings an action against Gidget for intentional inflection of emotional distress. On the foregoing facts, the element that is missing from Tiffany's claim of intentional inflection of emotional distress is:

_____

Question 3.

Del's sporting goods shop was burglarized by an escaped inmate from a nearby prison. The inmate stole a rifle and bullets from a locked cabinet. The burglar alarm at Del's shop did not go off because Del had negligently forgotten to activate the alarm's motion detector.

Shortly thereafter, the inmate used the rifle and ammunition stolen from Del in a shooting spree that caused injury to several people, including Paula.

If Paula brings an action against Del for negligence, seeking damages for the injury she suffered, what element of Paula's negligence claim will be in doubt?

Questions 4-5. Questions 4 and 5 are based on the following fact pattern:

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.

Question 4.

If Chloe brings an action for battery against Chuck, what element will be missing or in doubt?

Question 5.

On what doctrine of tort law will Chloe rely in order the supply the missing element?

PART III – ESSAY QUESTION
(suggested time: twenty minutes)

Rick Ruffian, a teenager who should have been in school that day, entered a Massachusetts Bay Transportation Authority (MBTA) subway station and jumped a turnstile without paying the fare. He ran toward a train and entered it just as the doors were closing. The train was already crowded and Ruffian's entry caused him to collide heavily with two persons on the train, Granny and Frannie. Granny, who was elderly and had very brittle bones because of a hereditary condition, suffered a broken pelvis. Frannie was carrying a box of delicate crystal goblets, two of which were shattered by the impact.

Danny (who was standing next to Granny) saw Ruffian coming and, thinking that he would be hit hard by Ruffian, suffered a momentary fainting spell.

Polly Copper, a policewoman on her way to work, saw what happened to Granny and Frannie and immediately came to their aid by shoving Ruffian against the door. This action caused the hydraulic system controlling all of the doors of the train to jam. When the train reached the next station, it was impossible to let people out. Fifteen minutes elapsed before MBTA transit workers succeeded in opening the doors from the outside. Polly then arrested Ruffian and took him to the police station.

What intentional torts, if any, have been committed? By whom? Why?

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MIDTERM EXAMINATION
THIS IS A CLOSED BOOK EXAMINATION

This is a closed book examination. Nothing other than a writing instrument is allowed on your person or at or near your desk. Cell phones must be powered off and put away. It is a disciplinary violation to have a cell phone on or near your person.

Questions will be weighted in accordance with the amount of time suggested for each question. All questions are to be answered in one or more blue books, except that the multiple-choice questions are to be answered on the Scantron card which is distributed with this exam.

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

Use only your student identification number to identify your blue book or blue books, your Scantron card, and this white examination paper. If you use more than one blue book, identify each one ("No. 1 of 2," "No. 2 of 2," etc.), make sure that your student ID number is on each one, and insert all others into the first blue book when you turn them in.

ALL BLUE BOOKS AND THIS WHITE EXAMINATION PAPER MUST BE RETURNED AT THE END OF THE EXAMINATION. LABEL ANY SCRAP BLUE BOOK WITH THE WORD 'SCRAP."

QUESTION ONE
TEN MULTIPLE CHOICE QUESTIONS
(suggested time: thirty minutes)

When you have determined your answer to each of the following questions, mark the answer with a No. 2 pencil in the appropriate block of the Scantron card.

QUESTION I-1.

When a tire of a motorist's car suffered a blowout, the car rolled over and the motorist was badly injured. Vehicles made by the manufacturer of the motorist's car have been found to be negligently designed, making them dangerously prone to rolling over when they suffer blowouts. A truck driver who was driving behind the motorist when the accident occurred stopped to help. Rescue vehicles promptly arrived, and the truck driver walked along the side of the road to return to his truck. As he approached his truck, he was struck and injured by a speeding car. The truck driver has sued the manufacturer of the injured motorist's car.

Is the truck driver likely to prevail in a suit against the car manufacturer?

(A) No, because the car manufacturer's negligence was not the proximate cause of the truck driver's injuries.
(B) No, because the truck driver assumed the risk of injury when he undertook to help the motorist.
(C) Yes, because it is foreseeable that injuries can result from rollovers.
(D) Yes, because the car manufacturer's negligence caused the dangerous situation that invited the rescue by the truck driver.

QUESTION I-2.

A driver negligently ran into a pedestrian who was walking along a road. The pedestrian sustained an injury to his knee, causing it to buckle from time to time. Several months later, the pedestrian sustained an injury to his shoulder when his knee buckled, causing him to fall down a flight of

stairs. The pedestrian then brought an action against the driver for the injuries to his knee and shoulder.

In his action against the driver, for which of his injuries may the pedestrian recover damages?

(A) For the injuries to his knee and shoulder, because the driver takes the victim as he finds him.
(B) For the injuries to his knee and shoulder, if the jury finds that the pedestrian's fall down a flight of stairs was a normal consequence of his original injury.
(C) For the injury to his knee only, because the injury to the pedestrian's shoulder is separable.
(D) For the injury to his knee only, if the jury finds that the driver could not have foreseen that his negligent driving would cause the pedestrian to fall down a flight of stairs.

QUESTION I-3.

A driver was traveling along a highway during an unusually heavy rainstorm when the roadway began to flood. To protect his car from water damage, the driver pulled his car up a steep, unmarked driveway abutting the highway that led to a homeowner's residence. The driver left his car parked in the driveway and walked home, intending to return when the floodwater had subsided. Shortly after the driver started to walk home, the homeowner carefully rolled the car back down his driveway and parked it on the highway shoulder. The floodwater continued to rise and caused damage to the driver's car.

If the driver sues the homeowner to recover for damage to the car, is the driver likely to prevail?

(A) Yes, because the driver was privileged to park his car on the homeowner's property.
(B) Yes, because there were no "no trespassing" signs posted.
(C) No, because the driver intentionally drove his car onto the homeowner's property.
(D) No, because the homeowner was privileged to remove the car from his property.

QUESTION I-4.

A hotel employed a carefully selected independent contractor to rebuild its swimming pool. The hotel continued to operate while the pool was being rebuilt. The contract between the hotel and the contractor required the contractor to indemnify the hotel for any liability arising from the contractor's negligent acts. A guest of the hotel fell into the excavation, which the contractor had negligently left unguarded.

In an action by the guest against the hotel to recover for his injuries, what would be the most likely income?

(A) Liability, because the hotel had a nondelegable duty to the guest to keep a safe premises.
(B) Liability, because the contract between the hotel and the contractor required the contractor to indemnify the hotel for any liability arising from the contractor's negligent acts.
(C) No liability, because the contractor was the actively negligent party.
(D) No liability, because the hotel exercised reasonable care in employing the contractor.

QUESTION I-5.

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 I-6.

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 I-7.

Paine and Duncan were playing tennis. Duncan became highly irritated because every time Duncan prepared to serve, Paine started talking loudly. Paine's loud talk distracted Duncan from his game, and Duncan usually faulted on his serves. Duncan told Paine to "cut it out," but Paine persisted in the behavior.

To get Paine to cease and desist, Duncan swung his tennis racquet toward Paine's head. Duncan intended only to frighten Paine, knowing that the racquet would miss Paine's head by several inches. However, Duncan slipped as he swung the racquet and it flew out of his hand as he lost his balance. The racquet flew through the air and struck Paine in the head.

Has Paine grounds for a battery action against Duncan?

(A) Yes, because Duncan intended to create a reasonable apprehension in Paine.
(B) Yes, because the racquet struck Paine.
(C) No, because Duncan did not intend the racquet to strike Paine.
(D) No, but only if Duncan can prove that the owner of the tennis court did not maintain the court property and this caused Duncan to slip.

Question I-8.

Doophous gave his sixteen-year-old son a .22 caliber target pistol for his birthday. The boy was permitted to keep the pistol and ammunition in his dresser drawer. One weekend the boy took the loaded gun out onto the street where Doophous lived and shot Peewee, a ten-year-old neighbor, after the two of them argued about sneakers. Peewee brought an action to recover for his personal injuries against Doophous. Who should prevail?

(A) Peewee, because Doophous's son was old enough to form the mental state sufficient to commit the tort of battery.
(B) Peewee, unless Doophous can show that he was unaware of his son's character trait for violence.
(C) Doophous, unless Peewee can prove that Doophous was negligent in giving the pistol to his son.
(D) Doophous, because Doophous is not vicariously liable for an intentional tort committed by his son.

Question I-9.

Stonewing decided to take his privately owned single propeller airplane up for a ride one brisk April morning. After he had been up for about an hour, gale force winds arose and Stonewing had trouble keeping control of his plane. Just as he rounded a hill he saw a huge black storm cloud approaching. The winds almost knocked him into the side of the hill. An experienced pilot, Stonewing knew that he would crash if he did not land soon.

Just ahead lay Beefsteak's tomato field. Stonewing prepared for a rough landing and began his descent. Stonewing survived, but Beefsteak's

tomato crop did not. Beefsteak sues Stonewing for damages. He will most likely collect:

(A) Nothing, because the landing was caused by an emergency.
(B) Nothing, unless he can prove that Stonewing was negligent.
(C) Damages for trespass and for the loss of the tomato crop.
(D) Damages only for the loss of the tomato crop.

Question I-10.

While on a hiking trip during the late fall, Page arrived toward the end of the day at a clearing where several similar cabins were located, none of which was occupied. One of the cabins belonged to Levin, Page's friend, who had given Page permission to use it. Page entered one of the cabins believing it to be Levin's, and prepared to spend the night. In fact the cabin was owned, not by Levin, but by Dwyer.

When the night turned cold, Page started a fire in the stove. Unknown to Page, there was a defect in the stove that allowed carbon monoxide fumes to escape into the cabin. During the night the fumes caused serious injury to Page.

If Page asserts a claim against Dwyer for her injury, will Page recover?

(A) Yes, if Dwyer knew that the stove was defective.
(B) Yes, if Dwyer could have discovered the defect in the stove by reasonable inspection.
(C) No, because Dwyer had no reason to anticipate Page's presence in the cabin.
(D) No, because Page was negligent.

QUESTION TWO
CASE BRIEF
(suggested time: fifteen minutes)

Printed on the next page is a well-known case found in another Torts casebook. In your blue book, write a case brief for this case.

NEW YORK C.R.R. CO. V. GRIMSTAD

264 F. 334 (2d Cir. 1920)

WARD, CIRCUIT JUDGE. This is an action under the federal Employers' Liability Act to recover damages for the death of Angell Grimstad, captain of the covered barge Grayton, owned by the defendant railroad company. The charge of negligence is failure to equip the barge with...necessary and proper appliances, for want of which the decedent, having fallen into the water, was drowned.

The barge was lying on the port side of the steamer Santa Clara, on the north side of Pier 2, Erie Basin, Brooklyn, loaded with sugar in transit from Havana to St. John, N.B. The tug Mary M, entering the slip between Piers 1 and 2, bumped against the barge. The decedent's wife, feeling the shock, came out from the cabin, looked on one side of the barge, and saw nothing, and then went across the deck to the other side, and discovered her husband in the water about 10 feet from the barge holding up his hands out of the water. He did not know how to swim. She immediately ran back into the cabin for a small line, and when she returned with it he had disappeared.***

The jury found as a fact that the defendant was negligent in not equipping the barge with life-preservers.***

Obviously the proximate cause of the decedent's death was his falling into the water, and in the absence of any testimony whatever on the point, we will assume that this happened without negligence on his part or on the part of the defendant. On the second question, whether a life-buoy would have saved the decedent from drowning, we think the jury were left to pure conjecture and speculation. A jury might well conclude that a light near an open hatch or a rail on the side of a vessel's deck would have prevented a person's falling into the hatch or into the water, in the dark. But there is nothing whatever to show that the decedent was not drowned because he did not know how to swim, nor anything to show that, if there had been a life-buoy on board, the decedent's wife would have got it in time, that is, sooner than she got the small line, or, if she had, that she would have thrown it so that her husband could have seized it, or, if she did, that he would have seized it, or that, if he did, it would have prevented him from drowning.

The court erred in denying the defendant's motion to dismiss the complaint at the end of the case. Judgment reversed.

QUESTION THREE
ESSAY QUESTION
(suggested time: thirty minutes)

Cecily Churchmouse, a widow, lived in a trailer located on a site which she rented at the Big Beach trailer park. She loved her trailer because it was the only home she ever lived in that she owned. "It's my little bit of heaven here on earth," she would say. She bought the trailer with a $10,000 down payment, the proceeds of her late husband's life insurance policy. She financed the remainder of the purchase price, $50,000, with a loan and mortgage from the Warm Fuzzy Finance Co. ("WFFCO"). Each month she made a mortgage payment from her modest Social security check.

Of all her possessions, next to her trailer Cecily loved best the hi-def television set that her children gave her for Christmas.

Earlier this month, the trailer was removed from Big Beach trailer park by repossession specialists employed by WFFCO. Cecily protested, standing in the doorway of the trailer and shaking her umbrella at the repo men. She told the repo men that they were making a mistake.

"That's what they all say, lady," replied one of the repo men.

Cecily refused to step down from the doorway and fell from the trailer as it was being pulled away, suffering a broken hip. She is currently in the hospital.

In fact, WFFCO's repo men had erroneously repossessed Cecily's trailer, mistaking it for an identical trailer which was the property of Stranger who had fallen behind on his mortgage payments to WFFCO. Cecily was current in her payments.

Cecily's daughter Clarissa is enrolled in law school. She told her Torts professor the foregoing story. The professor said that he thought Cecily would have a hell of a good lawsuit. He also advised Clarissa to inspect the trailer at WFFCO's tow lot. Upon doing so, Clarissa discovered that a small section of the trailer had been dented while it was in WFFCO's possession. It will cost $500 to repair the dent. Clarissa also discovered that the hi-def television set was missing.

For what intentional torts, if any, can Cecily recover from WFFCO?

END OF EXAMINATION

REMEMBER, ALL BLUE BOOKS MUST BE TURNED IN. THIS INCLUDES BLUE BOOKS THAT ARE ENTIRELY UNUSED, AND ALSO BLUE BOOKS USED AS SCRAP. LABEL ANY SCRAP BLUE BOOK WITH THE WORD, "SCRAP."

REMEMBER, THIS WHITE EXAM PAPER MUST BE TURNED IN ALONG WITH YOUR BLUE BOOK OR BLUE BOOKS.

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TORTS
Mr. Martin
Spring 2017 Student ID No.:_____

MIDTERM EXAMINATION

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The time allowed for this examination is seventy-five minutes (one hour and fifteen minutes). Questions will be weighted in accordance with the amount of time suggested for each question.

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Relax and try to have some fun.

PART I
FIVE MULTIPLE-CHOICE QUESTIONS
(suggested time: fifteen minutes)

Question 1.

Defendant was camping by himself in Great Forest. One night, he drank a six-pack of beer and, in his impaired state, negligently knocked a can of gasoline into his campfire. Although Defendant survived, he could not control the blaze and ran for help.

At another campsite in Great Forest, at the same time, an unknown camper was sitting around his campfire smoking a cigarette. Finishing the cigarette, he negligently flicked the burning butt into a pile of dried brush. Upon seeing that the cigarette started a fire, the unknown camper ran for the hills, never to be heard from again.

By the time the two fires met, they had obtained equal magnitude. When joined, the fire doubled in size and kept spreading. The combined fire destroyed Plaintiff's cottage. Plaintiff sued Defendant for the destruction of the cottage. Which of the following describes Defendant's liability to Plaintiff?

(A) Defendant is liable only if either fire alone would have destroyed Plaintiff's cottage.
(B) Defendant is liable only if neither fire alone would have destroyed Plaintiff's cottage.
(C) Defendant is liable.
(D) Defendant is not liable.

Question 2.

While Driver was taking a leisurely spring drive, he momentarily took his eyes off the road to look at some colorful trees in bloom. As a result, his car swerved a few feet off the roadway directly toward Walker, who was standing on the shoulder of the road waiting for a chance to cross. When Walker saw the car bearing down on him he jumped backwards, fell, and injured his knee.

Walker sued Driver for damages and Driver moved for summary judgment. The foregoing facts are undisputed.

Driver's motion should be

(A) denied, because the record shows that Walker apprehended an imminent harmful contact with Driver's car.
(B) denied, because a jury could find that Driver negligently caused Walker to suffer a legally compensable injury.
(C) granted, because the proximate cause of Walker's injury was his own voluntary act.
(D) granted, because it is not unreasonable for a person to be distracted momentarily.

Question 3.

Plaintiff entered a hospital for a knee operation, after having been informed that there was a one percent chance of infection in the procedure. After Plaintiff's knee became infected, he sued, alleging negligence on the part of Defendant, the surgeon. Plaintiff, relying upon *res ipsa loquitur*, produced no expert testimony. Defendant moved for a directed verdict. The trial judge should:

(A) grant the motion, because Plaintiff had been warned of the one percent chance of infection.
(B) grant the motion, because Plaintiff produced no expert testimony.
(C) deny the motion, because *res ipsa loquitur* eliminates the need to produce expert testimony.
(D) deny the motion, because the infection is such a rare occurrence (one percent) that, when it occurs, a jury may find, without expert testimony, that it is more likely due to the surgeon's negligence than some other cause.

Question 4.

While Patty was riding her horse on what she thought was a public path, the owner of a house next to the path approached her, shaking a stick and shouting, "Get off my property." Unknown to Patty, the path on which she was riding crossed the private property of the shouting owner. When Patty explained that she thought the path was a public trail the man cursed her, approached Patty's horse, and struck the horse with the stick. As a result of the blow the horse reared, causing Patty to fear that she would fall.

However, Patty managed to stay on the horse, and then departed. Neither Patty nor the horse suffered bodily harm.

If Patty brings an action for damages against the property owner, the result should be for

(A) Patty, for trespass to her chattel property.
(B) Patty, for battery and assault.
(C) the defendant, because Patty suffered no physical harm.
(D) the defendant, because he was privileged to exclude trespassers from his property.

Question 5.

Defendant negligently injured Plaintiff, causing a cut on Plaintiff's forehead which did not heal. Two years later, Plaintiff consulted a specialist in skin diseases, and was informed that he had skin cancer at the point of the injury. In Plaintiff's action against Defendant to recover damages for the skin cancer,

(A) Plaintiff will not recover unless a qualified expert testifies that the cancer was probably caused by the injury.
(B) Plaintiff will not recover unless Defendant could reasonably foresee that skin cancer could result from an injury to Plaintiff, and a qualified expert testifies that the cancer was probably caused by the injury.
(C) Plaintiff will not recover unless Defendant could reasonably foresee that serious harm could result to Plaintiff from Defendant's conduct, and a qualified expert testifies that the cancer was probably caused by the injury.
(D) Plaintiff will not recover unless a qualified expert testifies that there is a reasonable possibility that the cancer was caused by the injury.

PART II—FIVE FILL-IN-THE-BLANKS QUESTIONS

(suggested time: ten minutes)

Question 1.

Dandy went to the lumber yard late on a Saturday afternoon to purchase some plywood. He went to the shed at the back of the yard where the plywood was kept. While Dandy was looking over the plywood, time

passed. Watchman, whose duty it was to close up the yard, closed and locked the only gate because it was closing time and he believed that all the employees and customers were out of the yard. Dandy realized that he was locked in the lumber yard until Monday. The lumber yard was enclosed by a twelve-foot-high chain link fence topped with razor wire.

Dandy brings an action for false imprisonment against the lumber yard. On the foregoing facts, the element that is missing from Dandy's false imprisonment claim is:

Question 2.

Before a large group of their friends, Gidget came up behind Tiffany, grabbed her by the hair, and accused Tiffany of having an affair with Gidget's husband. The accusation was false, but Gidget believed it to be true. Tiffany was severely distressed.

Tiffany brings an action against Gidget for intentional inflection of emotional distress. On the foregoing facts, the element that is missing or in doubt in Tiffany's claim of intentional infliction of emotional distress is:

Question 3.

A passenger departed on an ocean liner knowing that it would be a rough voyage due to predicted storms. The ocean liner was not equipped with the type of lifeboats required by the applicable statute.

The passenger was swept overboard and drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.

In an action against the operator of the ocean liner brought by the passenger's representative, what element is missing?

Questions 4-5. Questions 4 and 5 are based on the following fact pattern:

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.

Question 4.

If Chloe brings an action for battery against Chuck, what element will be missing or in doubt?

Question 5.

On what doctrine of tort law will Chloe rely in order the supply the missing element?

PART III – ESSAY QUESTIONS

ESSAY QUESTION #1

(suggested time: twenty-five minutes)

Rick Ruffian, a teenager who should have been in school that day, entered a Massachusetts Bay Transportation Authority (MBTA) subway station and jumped a turnstile without paying the fare. He ran toward a train and entered it just as the doors were closing. The train was already crowded and Ruffian's entry caused him to collide heavily with two persons on the train, Granny and Frannie. Granny, who was elderly and had very brittle bones because of a hereditary condition, suffered a broken pelvis. Frannie was carrying a box of delicate crystal goblets, two of which were shattered by the impact.

Danny (who was standing next to Granny) saw Ruffian coming and, thinking that he would be hit hard by Ruffian, suffered a momentary fainting spell.

Polly Copper, a policewoman on her way to work, saw what happened to Granny and Frannie and immediately came to their aid by shoving Ruffian against the door. This action caused the hydraulic system controlling all of the doors of the train to jam. When the train reached the next station, it was impossible to let people out. Fifteen minutes elapsed before MBTA transit workers succeeded in opening the doors from the outside. Polly then arrested Ruffian and took him to the police station.

What intentional torts, if any, have been committed? By whom? Why?

ESSAY QUESTION #2

(suggested time: twenty-five minutes)

Edward entered Andover High School in September, 2012 and graduated in June, 2016. Notwithstanding the receipt of a diploma, he lacks the ability to comprehend written English on a level sufficient to enable him to complete applications for employment.

Edward sued the Andover School Committee[1] for educational malpractice. His complaint alleged that the School Committee through its employees:

1. Gave Edward passing grades in subjects that he had failed so that Edward would continue to be eligible to play football;

2. Failed to evaluate Edward's mental ability using appropriate testing techniques; and

3. Failed to develop remedial programs for Edward and other similarly underperforming students.

Edward seeks damages in the amount of $5,000,000.

Assume that the allegations of Edward's complaint are true and that Edward can prove them. Also assume that the School Committee is liable for the acts and omissions of its employees. What, additionally, will Edward

[1] "School Committee" is the Massachusetts term for what is usually called, outside New England, a "School Board," the elected body that supervises public education within its geographical jurisdiction.

have to prove in order to make out a prima facie case of educational malpractice?

END OF EXAMINATION

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TORTSMidtermSPRING2017/Martin

TORTS
Mr. Martin
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PART I
FIVE MULTIPLE-CHOICE QUESTIONS
(suggested time: fifteen minutes)

When you have determined your answer to each of the following questions, fill in the answer ("A," "B," "C," or "D") on the bubble sheet provided.

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

Peaches and Mike were passengers sitting in adjoining seats on a Defendant Airlines flight. There were many empty seats on the aircraft. During the flight an air concierge (formerly called stewardess) served Mike nine drinks. As Mike became more and more obviously intoxicated, he attempted to engage Peaches in conversation. Peaches chose to ignore him. This angered Mike, who suddenly struck Peaches in the face giving her a black eye.

Question 1.

If Peaches asserts a claim for damages against Defendant Airlines based on negligence, Peaches will

(A) not recover, because a person is not required by law to come to the assistance of another who is imperiled by third party.
(B) not recover, if Peaches could easily have moved to another seat.
(C) recover, because a common carrier is strictly liable for injuries suffered by a passenger while aboard the carrier.
(D) recover, if the air concierge should have perceived Mike's condition and acted to protect Peaches before the blow was struck.

Question 2.

If Peaches asserts a claim for damages against Defendant Airlines based on battery, she will

(A) prevail, because she suffered an intentionally inflected harmful or offensive contact.
(B) prevail, if the air concierge acted recklessly in continuing to serve liquor to Mike.

(C) not prevail, because Mike was not acting as an agent or employee of Defendant Airlines.
(D) not prevail, unless she can establish some permanent injury from the contact.

Question 3.

Professor Merrill, in a lecture in her psychology course at a private university, described an experiment in which a group of college students in a neighboring city rushed out and washed cars stopped at traffic lights during the rush hour. She described how people reacted differently—with shock, joy, and surprise. Four of Merrill's students decided to try the same experiment.

One subject of their experiment, Carr, said, "I was shocked. There were two people on each side of the car. At first I thought negatively. I thought they were going to attack me and thought of driving away. Then I quieted down and decided there were too many dirty cars in the city anyway."

If Carr asserts a claim against the students who washed his car, his best theory is:

(A) Assault.
(B) Negligence.
(C) Battery.
(D) False imprisonment.

Question 4.

A patient had been under the care of a cardiologist for three years prior to submitting to an elective operation that was performed by a surgeon. Two days thereafter, the patient suffered a stroke, resulting in a coma, caused by a blood clot that lodged in her brain. When it appeared that she had entered a permanent vegetative state, with no hope of recovery, the artificial life-support system that had been provided was withdrawn, and she died a few hours later. The withdrawal of artificial life support had been requested by her family, and duly approved by a court. The surgeon was not involved in that decision, or in its execution.

The administrator of the patient's estate thereafter filed a wrongful death action against the surgeon, claiming that the surgeon was negligent in having failed to consult a cardiologist prior to the operation. At the trial the plaintiff offered evidence that accepted medical practice would require examination of the patient by a cardiologist prior to the type of operation that the surgeon performed.

In this action, the plaintiff should

(A) prevail, if the surgeon was negligent in failing to have the patient examined by a cardiologist prior to the operation.
(B) prevail, if the blood clot that caused the patient's death was caused by the operation which the surgeon performed.
(C) not prevail, absent evidence that a cardiologist, had one examined the patient before the operation, would probably have provided advice that would have changed the outcome.
(D) not prevail, because the surgeon had nothing to do with the withdrawal of artificial life support, which was the cause of the patient's death.

Question 5.

Eric Tata purchased a new Devastator motorcycle manufactured by Bor-Borygmi Co. of Poland. One week later Eric was riding the motorcycle along a residential street. Although he had been riding the motorcycle all week, he still was not proficient at steering it. He saw Rosemarie Dollop, a school classmate, walking on the sidewalk. He decided to scare Rosemarie by swerving onto the sidewalk at a driveway and swerving back onto the street at another driveway just before the area where Rosemarie was walking. However, as Eric attempted to swerve off the sidewalk and back onto the street, the Devastator's front tire blew out causing Eric to lose control of the steering. He attempted to apply the brake but due to his inexperience he tweaked the accelerator by mistake. The motorcycle struck and seriously injured Rosemarie.

Two days before the accident, Eric had received a letter from Bor-Borygmi warning him of a potential defect in the front tire of all Devastator motorcycles which could cause the tire to suddenly blow out. The letter asker Eric to bring the motorcycle to any Bor-Borygmi dealer so that the

front tire could be inspected and replaced if necessary. Eric read the letter but had not yet taken the motorcycle to a dealer.

If Rosemarie asserts a claim against Eric for battery, who is most likely to prevail?

(A) Rosemarie, because Eric intended to frighten her.
(B) Rosemarie, unless Eric's negligence in hitting the accelerator was the cause of the accident
(C) Eric, because he did not intend to inflict bodily harm on Rosemarie.
(D) Eric, because the injury was caused by the defective front tire.

PART II—TWO REVERSE MULTIPLE-CHOICE QUESTIONS
(suggested time: twenty minutes)

Together with the following two multiple-choice questions you are given the correct or best answer. In your blue book, explain why this correct or best answer is the best answer to the question and why the other answers are wrong or else not so good as the answer that is identified as correct or best. Be sure to discuss all of the possible question answers ("A," "B," "C" and "D") in each of the following questions.

Reverse multiple-choice Question 1.

One Saturday, Danny took his daughter Angela, age six, to an amusement park owned by AmuseCo to ride the carousel. Angela climbed onto one of the horses, and Danny attached the safety belt around her waist. He then stood at the side of the horse to hold Angela in case she needed help. The music started, the carousel began to turn slowly. Instead of settling in at a constant rate of speed, the carousel continued accelerating. Angela was thrown from her horse onto the spinning platform, breaking her leg. Angela sues AmuseCo for negligence. At trial, she offers in evidence the facts just stated, and then rests. AmuseCo moves for a directed verdict on the ground that Angela has not offered any evidence of negligence. Angela responds that the court should deny the motion because of the doctrine of res ipsa loquitur.

Which of the following statements is most likely correct?

(A) Even if res ipsa loquitur applies, it can only be used to supplement other direct evidence pointing to negligence on defendant's part. Here, because no such evidence was offered, the court should grant AmuseCo's motion.

(B) While it is possible that res ipsa loquitur can be applied, expert testimony is always required when the issue concerns whether a malfunction in a mechanical device was caused by negligence. Because Angela has not offered such evidence, the court should grant AmuseCo's motion.

(C) Because possibilities other than negligence can explain the accident, the doctrine does not apply, and the court should grant AmuseCo's motion.

(D) Because the circumstantial evidence supports the inferences necessary for application of res ipsa loquitor, the court would not err in denying AmuseCo's motion.

The correct answer is "D." In your bluebook, explain why answer "D" is correct and why answers "A," "B," and "C," are not correct.

Reverse multiple-choice Question 2.

A fire that started in the defendant's warehouse spread to the plaintiff's adjacent warehouse. The defendant did not intentionally start the fire, and the plaintiff can produce no evidence as to how the fire started. However, the defendant had failed to install a sprinkler system, which was required by a criminal statute. The plaintiff can produce evidence that had the sprinkler system been installed, it could have extinguished the fire before it spread.

In an action by the plaintiff against the defendant to recover for the fire damage, is it possible for the plaintiff to prevail?

(A) No, because the statute provides only for criminal penalties.

(B) No, because there is no evidence that the defendant negligently caused the fire to start.

(C) Yes, because a landowner is strictly liable for harm to others caused by the spread of fire from his premises.

(D) Yes, because the plaintiff was harmed as a result of the defendant's violation of a statute that was meant to protect against this type of occurrence.

The correct answer is "D." In your bluebook, explain why answer "D" is correct and why answers "A," "B," and "C," are not correct.

PART III – ESSAY QUESTIONS
ESSAY QUESTION #1
(suggested time: twenty minutes)

In Tracy & Co. v. City of Los Angeles the plaintiff ("Tracy") was the consignee and owner of 2000 bags of coffee which had been received at the port of Los Angeles and were stored in a pierside shed awaiting pickup by Tracy. The coffee was ruined when the floor of the shed was flooded after an 8-inch water main pipe leading into the shed burst. Tracy sued the City of Los Angeles, claiming that the City knew or should have known that the pipe was in an ancient, weak, decaying and corroded condition. Trial testimony showed that the pipe had been laid down approximately forty years before and never had been subsequently inspected.

At trial, experts testified that the pipe failed because of graphitic corrosion. Graphitic corrosion occurs when iron in pipe is leached out and replaced by graphite. The leaching of the iron from the pipe and its replacement by graphite does not change the pipe shape or contour. The only effect upon the pipe is that it loses strength; then, under pressure, the pipe gives way in a corroded spot. Graphitic corrosion is accelerated when cast iron pipe is laid in highly corrosive soil.

Tracy contended that the City knew or should have known that the pipe was located in highly corrosive soil and that the City was negligent in failing to make any kind of inspection of it over the course of forty years. There was evidence of other incidents of graphitic corrosion in water pipes in the Los Angeles harbor region. The City argued that there was no way

adequately to inspect this or any pipe for evidence of graphitic corrosion except to excavate the pipe line in its entirety, including removing the earth under the pipe so that its bottom could be inspected as well as its top, which would put a strain on the pipe and might cause damage more extensive than the corrosion itself.

The City acknowledged that its policy with respect to water mains was to put the pipe in the ground and then to make neither inspections nor repairs until leaks occurred. When leaks develop they are repaired. When they become too numerous, the pipes are replaced. The City's evidence at trial suggested that this was the policy of all municipalities in California, insofar as they had any policies at all. Tracy's experts responded that this does not describe a "policy" at all but is just an excuse for inaction.

Tracy introduced water meter readings to show that for some months prior to the flood there had been a flow of water into the system averaging 140 cubic feet of water per day. Because the line was a "dead end" pipe, supplying water for firefighting purposes only, Tracy argued, the City should have made a thorough investigation to determine the cause of the flow or loss of water.

The City's experts responded that the meter readings did not indicate that any water was escaping from the pipe at the point where it burst. On the contrary, they said, if there were a failure by reason of graphitic corrosion there would have been a flood of water, such as occurred, rather than a gradual leak. Furthermore, in the absence of water coming to the surface the source of any leak could not be found without digging up the pipe.

The case was tried to a judge sitting without a jury. No special rule of governmental tort liability applies. Should the judge find the City of Los Angeles negligent, or not? Explain why or why not.

ESSAY QUESTION #2
(suggested time: twenty minutes)

Assistant District Attorney Terry Stopps visited the law office of Philander S. Podsnap on January 10, 2018, to discuss a case. While Stopps and Podsnap were in the midst of discussions a paralegal in Podsnap's law firm, Tim Woodenstone, attempted to enter Podsnap's office without knocking or announcing his entry. Terry pushed the door closed, thereby pushing Tim back into the hallway. Moments later, Tim re-entered the office. Terry rebuked Tim for his rude conduct. Seeing that Podsnap was not going to do anything about it, Terry left Podsnap's office.

Tim sued Terry for battery, false imprisonment, and intentional infliction of emotional distress. After answering the complaint, Terry moved for summary judgment.[1] Terry's motion asserts that "As a matter of law, no battery, no false imprisonment, and no intentional infliction of emotional distress occurred on January 10, 2018." Terry supported her motion with an affidavit which stated in part as follows:

> Attorney Podsnap and I had settled into a serious discussion about the case and had established a good rapport when the door to his office suddenly swung open without a knock. An unidentified individual carrying some papers then strode in unannounced. I had not been told that anyone would be entering attorney Podsnap's office during the private meeting. I subsequently learned that this individual was Mr. Woodenstone.

[1] A motion for summary judgment asserts that there are no material facts in dispute and that the moving party is entitled to judgment as a matter of law. In tort cases, motions for summary judgment are usually defendants' weapons.

Tim Woodenstone responded to Terry's affidavit with a counter-affidavit stating in part:

> I am a born-again Christian and cultivate holiness in my life. As a result I am very sensitive to evil spirits and am greatly disturbed by the demonic. However, in Christ there is victory.
>
> On January 10, 2018, Assistant District Attorney Terry Stopps visited the ministry where I was working at the office of attorney P. S. Podsnap.
>
> That morning I entered the office of Mr. Podsnap to give him certain papers that had been requested. Mr. Podsnap was speaking with ADA Stopps at that time. As I began to enter, ADA Stopps threw her body weight against the door and forced me out into the hall. I had not said a word to her. At the same time she snarled at me, "You get out of here." This was very shocking and frightening to me. In all the time I have been working for Mr. Podsnap I have never been physically assaulted or spoken to in a harsh or brutal manner. My blood pressure began to rise, my heartbeat accelerated, and I felt waves of fear in the pit of my stomach. My hands began to shake and my body to tremble. I reentered the office, whereupon ADA Stopps began a half-demented tirade against me and stormed out into the hall. I looked at Mr. Podsnap in wonder.

How should the judge decide Terry's motion for summary judgment? Why?

END OF EXAMINATION

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TORTSMidtermSPRING2018/Martin

TORTS
Mr. Martin
Spring, 2019 Student ID No. [redacted]

MIDTERM EXAMINATION

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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 student identification number to identify this examination paper and your blue book or blue books.

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QUESTION ONE

Distributed separately, and printed on blue paper, is the well-known case of Yania v. Bigan, copied from another Torts casebook.

In your blue book, write a case brief for Yania v. Bigan.

QUESTION TWO

Alison Wonderland suffered back injuries in an automobile accident and applied for personal injury benefits from her insurance company. The insurance company required Alison to submit to a medical examination. X-rays were taken by Dr. Rick Shaw of Alison's lower back and abdominal area on December 10. Unknown to her, Alison was four to six weeks pregnant at the time. Neither Dr. Shaw nor his receptionist nor his X-ray technician inquired whether or not she was pregnant or the date of her last menstrual period.

On December 15, however, suspecting that she might be pregnant, Alison visited Dr. Helena Handbasket, her gynecologist. Dr. Handbasket administered pregnancy tests and confirmed that Alison was pregnant. Later, in January, Dr. Handbasket learned that Dr. Shaw had taken X-rays of Alison's pelvis. Dr. Handbasket advised Alison to terminate the pregnancy because of possible damage to the fetus from the X-rays. Alison underwent a therapeutic abortion. The pathology report disclosed that the fetus was dead at the time of the abortion.

Alison sued Dr. Shaw for medical malpractice resulting in the death of her fetus. At the trial of her malpractice case against Dr. Shaw, Alison testified that her periods were irregular and that, if she had been asked whether or not she was pregnant, she would have answered in the negative.

Dr. Handbasket testified in Alison's behalf. However, when Alison's lawyer sought an opinion from her as to whether Dr. Shaw's practice conformed to a standard appropriate for the practice of radiology, Dr. Shaw's lawyer objected. Dr. Shaw's lawyer argued that Dr. Handbasket as a gynecologist was not qualified to give an opinion about radiology. The judge agreed and refused to permit Dr. Handbasket to give opinion testimony.

Part A.

At the close of Alison's evidence the trial court directed a verdict for the defendant, Dr. Shaw. Why?

Part B.

Imagine, as an alternative scenario, that a qualified expert witness in radiology gave, at the trial, an opinion that Dr. Shaw's failure to ask Alison if she were pregnant fell below the appropriate standard for the practice of radiology. Nevertheless, at the close of the evidence the trial judge directed a verdict for the defendant, Dr. Shaw. Why?

Part C.

From the trial judge's ruling described in Part B, Alison appealed. Was the trial judge correct to direct a verdict for the defendant, Dr. Shaw, in Part B? Why or why not?

QUESTION THREE

On a Sunday evening at 10:00 P.M. Molly Bygolly boarded an Everlate Airlines flight at Presque Isle, Maine, with non-stop service to Boston. The plane taxied away from the terminal but then stopped on the tarmac for 45 minutes. Finally the pilot made an announcement: "Due to mechanical problems, we will need to change equipment. We apologize for any inconvenience, and we thank you for flying Everlate Airlines."

Shortly thereafter, flight attendants ushered Molly and the other passengers out of the plane and onto a waiting bus. Molly assumed that the bus would take her to another plane. Within minutes, however, Molly realized that she was wrong. The bus left the airport and was driving to Boston.

Molly desperately wanted to get off the bus. But neither she, nor any other passenger, expressed such a sentiment to the driver. The bus finally reached Boston at 6:00 on Monday morning. Molly has come to your office, asking you to file a false imprisonment claim against Everlate Airlines.

Evaluate Molly's claim.

END OF EXAMINATION

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YANIA v. BIGAN

155 A.2d 343 (Pa. 1959)

Yania, the operator of a coal strip-mining operation, and Ross went upon Bigan's property to discuss a business matter with Bigan. While there, Bigan asked them to help him start a pump. Ross and Bigan entered the mining cut in the ground and stood where the pump was located. Yania stood at the top of one of the cut's side walls and jumped from the side wall — a height of 16 to 18 feet — into the 8 to 10 feet of water and was drowned.

Yania's widow instituted wrongful death and survival actions against Bigan contending Bigan was responsible for Yania's death. A demurrer was filed and the trial court sustained it. Plaintiff appealed. [Plaintiff initially contended] that Yania's descent from the high embankment into the water and the resulting death were caused "entirely" by the spoken words and blandishments of Bigan delivered at a distance from Yania. The complaint does not allege that Yania slipped or that he was pushed or that Bigan made any physical impact upon Yania. On the contrary the only inference deducible from the facts alleged in the complaint is that Bigan, by the employment of cajolery and inveiglement, caused such a mental impact on Yania that the latter was deprived of his volition and freedom of choice and placed under a compulsion to jump into the water. Had Yania been a child of tender years or a person mentally deficient then it is conceivable that taunting and enticement could constitute actionable negligence if it resulted in harm. However, to contend that such conduct directed to an adult in full possession of all his mental faculties constitutes actionable negligence is not only without precedent but completely without merit. * * *

Lastly, it is urged that Bigan failed to take the necessary steps to rescue Yania from the water. The mere fact that Bigan saw Yania in a position of peril in the water imposed upon him no legal, although a moral, obligation or duty to go to his rescue unless Bigan was legally responsible, in whole or in part, for placing Yania in the perilous position. Restatement of Torts § 314. *Cf.* Restatement of Torts § 322. The language of this Court in *Brown v. French*, 104 Pa. 604, 607, 608, is apt: "* * * That his undertaking was an exceedingly reckless and dangerous one, the event proves, but there was no one to blame for it but himself. He had the right to try the experiment, obviously dangerous as it was, but then also upon him rested the consequences of that experiment, and upon no one else; he may have been, and probably was, ignorant of the risk which he was taking upon himself, or knowing it, and trusting to his own skill, he may have regarded it as easily superable. But in either case, the result of his ignorance, or of his mistake, must rest with himself and cannot be charged to the defendants." The complaint does not aver any facts which impose upon Bigan legal responsibility for placing Yania in the dangerous position in the water and, absent such legal responsibility, the law imposes on Bigan no duty of rescue. * * * Order affirmed.