

Torts Final SP 2021 (2)

Exam ID:

Question #: 1

During a comprehensive evaluation of an adult patient's psychiatric condition, a psychiatrist failed to diagnose the patient's suicidal state. One day after the misdiagnosis, the patient committed suicide. The patient's father, immediately after having been told of his son's suicide, suffered severe emotional distress, which resulted in a stroke. The patient's father was not present at the patient's appointment with the psychiatrist, nor did he witness the suicide. The father has brought an action against the psychiatrist to recover for his severe emotional distress and the resulting stroke. Is the father likely to prevail?

- A. No, because the father did not sustain a physical impact.
- B. No, because the psychiatrist's professional duty did not extend to the harms suffered by the patient's father.
- C. Yes, because the father was a member of the patient's immediate family.
- D. Yes, because the psychiatrist reasonably could have foreseen that a misdiagnosis would result in the patient's suicide and the resulting emotional distress of the patient's father.

Question #: 2

A car owner washed her car while it was parked on a public street, in violation of a local ordinance that prohibits the washing of vehicles on public streets during specified hours. The statute was enacted only to expedite the flow of automobile traffic. Due to sudden and unexpected cold weather, the car owner's wastewater formed a puddle that froze in a crosswalk. A pedestrian slipped on the frozen puddle and broke her leg. The pedestrian sued the car owner to recover for her injury. At trial, the only evidence the pedestrian offered as to negligence was the car owner's admission that she had violated the ordinance. At the conclusion of the evidence, both parties moved for a directed verdict. How should the trial judge proceed?

- A. Deny both motions and submit the case to the jury, because, on the facts, the jury may infer that the car owner was negligent.
- B. Deny both motions and submit the case to the jury, because, on the facts, the jury may infer that the car owner was negligent.
- C. Grant the car owner's motion, because the pedestrian has failed to offer adequate evidence that the car owner was negligent.
- D. Grant the pedestrian's motion, because of the car owner's admitted ordinance violation.

Question #: 3

A construction company was digging a trench for a new sewer line in a street in a high-crime neighborhood. During the course of the construction, there had been many thefts of tools and equipment from the construction area. One night, the construction company's employees neglected to place warning lights around the trench. A delivery truck drove into the trench and broke an axle. While the truck driver was looking for a telephone to call a tow truck, thieves broke into the truck and stole \$350,000 worth of goods. The delivery company sued the construction company to recover for the \$350,000 loss and for the damage to its truck. The construction company has stipulated that it was negligent in failing to place warning lights around the trench and admits liability for damage to the truck, but it denies liability for the loss of the goods. On cross-motions for summary judgment on the claim for the goods, how should the court rule?

- A. Deny both motions, because there is evidence to support a finding that the construction company should have realized that its negligence could create an opportunity for a third party to commit a crime.
- B. Grant the construction company's motion, because no one could have foreseen that the failure to place warning lights could result in the loss of a cargo of valuable goods.
- C. Grant the construction company's motion, because the criminal acts of third persons were a superseding cause of the loss.
- D. Grant the delivery company's motion, because but for the construction company's actions, the goods would not have been stolen.

Question #: 4

An associate professor in the pediatrics department of a local medical school was denied tenure. He asked a national education lobbying organization to represent him in his efforts to have the tenure decision reversed. In response to a letter from the organization on the professor's behalf, the dean of the medical school wrote to the organization explaining truthfully that the professor had been denied tenure because of reports that he had abused two of his former patients. Several months later, after a thorough investigation, the allegations were proven false, and the professor was granted tenure. He had remained working at the medical school at full pay during the tenure decision review process and thus suffered no pecuniary harm. In a suit for libel by the professor against the dean of the medical school, will the professor be likely to prevail?

- A. No, because the professor invited the libel.
- B. No, because the professor suffered no pecuniary loss.
- C. Yes, because the dean had a duty to investigate the rumor before repeating it.
- D. Yes, because the dean's defamatory statement was in the form of a writing.

Question #: 5

A consumer became physically ill after drinking part of a bottle of soda that contained a large decomposed snail. The consumer sued the store from which she had bought the soda to recover damages for her injuries. The parties agreed that the snail had been put into the bottle during the bottling process. The parties also agreed that the snail would have been visible in the bottle before the consumer opened it. Will the consumer be likely to prevail in an action against the store?

- A. No, because the consumer could have seen the snail in the bottle before she drank out of it.
- B. No, because the store was responsible for the bottling process.
- C. Yes, because the consumer was injured by a defective product sold to her by the store.
- D. Yes, because the store had exclusive control over the bottle before selling it to the consumer.

Question #: 6

A four-year-old child sustained serious injuries when a playmate pushed him from between two parked cars into the street, where he was struck by a car. The child, by his representative, sued the driver of the car, the playmate's parents, and his own parents. At trial, the child's total damages were determined to be \$ 100,000. The playmate's parents were determined to be 20% at fault because they had failed to adequately supervise her. The driver was found to be 50% at fault. The child's own parents were determined to be 30% at fault for failure to adequately supervise him. The court has adopted the pure comparative negligence doctrine, with joint and several liability, in place of the common law rules relating to plaintiff's fault. In addition, the common law doctrines relating to intra-family liability have been abrogated. What is the maximum amount, if anything, that the child's representative can recover from the driver?

- A. \$30,000
- B. 50,000
- C. 100,000
- D. Nothing

Question #: 7

A bright 12-year-old child attended a day-care center after school. The center was located near a man-made duck pond on the property of a corporation. During the winter, the pond was used for ice-skating when conditions were suitable. At a time when the pond was obviously only partially frozen, the child sneaked away from the center's property and walked out onto the ice over the pond. The ice gave way, and the child fell into the cold water. He suffered shock and would have drowned had he not been rescued by a passerby. At the time of the incident, the pond was clearly marked with numerous signs that stated, "THIN ICE--KEEP OFF." When the child sneaked away from the day-care center, the center was staffed with a reasonable number of qualified employees, and the employees were exercising reasonable care to ensure that the children in their charge did not leave the premises. There had not been a previous instance of a child coming onto the corporation's property from the day-care center. The jurisdiction follows a rule of pure comparative negligence. In a suit brought on the child's behalf against the day-care center and based only on the facts above, who is likely to prevail?

- A. The child, because he left the center while he was under the center's care.
- B. The child, because the day-care center is located near a pond.
- C. The day-care center, because it was not negligent.
- D. The day-care center, because the child was a trespasser.

Question #: 8

A bright 12-year-old child attended a day-care center after school. The day-care center was located near a man-made duck pond on the property of a corporation. During the winter, the pond was used for ice-skating when conditions were suitable. At a time when the pond was obviously only partially frozen, the child sneaked away from the center's property and walked out onto the ice over the pond. The ice gave way, and the child fell into the cold water. He suffered shock and would have drowned had he not been rescued by a passerby. At the time of the incident, the pond was clearly marked with numerous signs that stated, "THIN ICE-KEEP OFF." When the child sneaked away from the day-care center, the center was staffed with a reasonable number of qualified employees, and the employees were exercising reasonable care to ensure that the children in their charge did not leave the premises. There had not been a previous instance of a child coming onto the corporation's property from the day-care center. The jurisdiction follows a rule of pure comparative negligence. In a suit brought on the child's behalf against the corporation and based only on the facts above, who is likely to prevail?

- A. The child, because the corporation owes a duty to keep its premises free of dangerous conditions.
- B. The child, because the pond was an attractive nuisance.
- C. The corporation, because the danger of thin ice may reasonably be expected to be understood by a 12-year-old child.
- D. The corporation, because the day-care center had a duty to keep the child off the ice.

Question #: 9

An ordinance a small town required all restaurants to designate smoking and nonsmoking sections for their customers. A cigarette smoker and a nonsmoker were seated at adjoining tables in a small restaurant. The smoker's table was in the smoking section, and the nonsmoker's table was in the nonsmoking section. When the smoker lit a cigarette, thenonsmoker politely requested that he not smoke, explaining that she had a severe allergy tocigarette smoke. The smoker ignored the nonsmoker's request and continued to smoke.As a result, the nonsmoker was hospitalized with a severe allergic reaction to the smoke.The nonsmoker brought a battery action against the smoker.Which of the following questions will NOT be an issue in the battery action?

- A. Did the smoker intend to cause the nonsmoker's contact with the cigarette smoke?
- B. Does smoke have the physical properties necessary for making the kind of contact required for battery?
- C. Is contact with cigarette smoke from a lawful smoking section in a restaurant the kind of contact one must endure as a voluntary restaurant patron?
- D. Was the smoker's conduct unreasonable under the circumstances?

Question #: 10

Under the Federal Tort Claims Act, with certain exceptions not relevant here, the federal government is liable only for negligence. A federally owned and operated nuclear reactor emitted substantial quantities of radioactive matter that settled on a nearby dairy farm, killing the dairy herd and contaminating the soil. At the trial of an action brought against the federal government by the farm's owner, the trier of fact found the following: (1) the nuclear plant had a sound design, but a valve made by an engineering company had malfunctioned and allowed the radioactive matter to escape; (2) the engineering company was universally regarded as a quality manufacturer of components for nuclear plants; and (3) there was no way the federal government could have anticipated or prevented the emission of the radioactive matter. If there is no other applicable statute, for which party should the court enter judgment?

- A. The farm owner on the ground that the doctrine of res ipsa loquitur applies.
- B. The farm owner, on the ground that who allows dangerous material escape to the property of liable for the damage done.
- C. The government, on the ground that a case under the Federal Tort Claims has not been proved.
- D. The government, on the ground that the engineering company is the proximate cause of the farm owner's damage.

Question #: 11

The owner of a shopping mall hired a construction company to design and construct a new entryway to the mall. The construction company negligently selected an unusually slippery material for the floor covering. A week after the entryway was completed, a customer who had come to the mall to buy cosmetics slipped on the floor of the entryway, sustaining injuries. The customer sued the mall owner for the construction company's negligent design of the mall's entryway. Will the injured customer be likely to recover damages?

- A. No, because the construction company will likely be considered an independent contractor.
- B. No, because no other customers had previously slipped on the floor.
- C. Yes, because the customer intended to make a purchase at the mall.
- D. Yes, because the mall's duty to maintain safe conditions was nondelegable.

Question #: 12

A cigarette maker created and published a magazine advertisement that featured a person dressed as a race-car driver with a helmet on standing in front of a distinctive race car. In fact, the car looked almost exactly like the very unusually marked car driven by a famous and popular driver. The driver in the ad was not identified, and his face was not shown. The cigarette maker published the advertisement without obtaining the famous driver's permission. The famous race-car driver sued the cigarette maker for economic loss only, based on common law misappropriation of the right of publicity. The cigarette maker moved to dismiss the complaint. Will the cigarette maker's motion to dismiss the complaint be granted?

- A. No, because there are sufficient indicia of the famous driver's identity to support a verdict of liability.
- B. Yes, because the driver is a public figure.
- C. Yes, because there was no mention of the famous driver's name in the ad.
- D. Yes, because the famous driver did not claim any emotional or dignitary loss.

Question #: 13

A consumer bought a kitchen blender from the manufacturer. Soon after the purchase, the consumer was using the blender in an appropriate way when the blender jar shattered, throwing a piece of glass into the consumer's eye. The consumer brought an action against the manufacturer based solely on strict products liability. The consumer's expert testified that the blender was defectively designed. However, because the blender jar had been destroyed in the accident, the expert could not determine whether the accident had been caused by the design defect or a manufacturing defect. The manufacturer's expert testified that the blender was not defective. If, at the conclusion of the evidence, both parties move for directed verdicts, how should the trial judge rule?

- A. Direct a verdict for the manufacturer, because the consumer's expert was unable to specify the nature of the defect.
- B. Direct a verdict for the manufacturer, because the consumer's action was brought solely on a strict liability theory.
- C. Direct a verdict for the consumer, because the blender was new when the jar shattered, and thus was undeniably defective.
- D. Deny both motions and send the case to the jury, because a jury reasonably could conclude that the harm was caused by a defect present in the product when it was sold.

Question #: 14

A recently established law school constructed its building in a quiet residential neighborhood. The law school had obtained all the necessary municipal permits for the construction of the building, which included a large clock tower whose clock chimed every hour. The chimes disturbed only one homeowner in the neighborhood, who had purchased her house prior to the construction of the building. The homeowner was abnormally sensitive to ringing sounds, such as bells and sirens, and found the chimes to be extremely annoying. In a nuisance action by the homeowner against the law school, will the homeowner be likely to prevail?

- A. Yes, because the chimes interfere with the homeowner's use and enjoyment of her property.
- B. Yes, because the homeowner purchased her house prior to the construction of the building.
- C. No, because the chimes do not disturb the other residents of the neighborhood.
- D. No, because the law school had obtained the requisite municipal permits to erect the clock tower.

Question #: 15

A law student rented a furnished apartment. His landlord began to solicit his advice about her legal affairs, but he refused to provide it. The landlord then demanded that he vacate the apartment immediately. The landlord also began engaging in a pattern of harassment, calling the student at home every evening and entering his apartment without his consent during times when he was at school. During these unauthorized visits, she removed the handles from the bathroom and kitchen faucets, making the faucets unusable, but she did not touch any personal property belonging to the student. The lease has a year to run, and the student is still living in the apartment. The student has sued the landlord for trespass. Is he likely to prevail?

- A. No, because he has no standing to sue for trespass.
- B. No, because the landlord caused no damage to his property.
- C. Yes, for compensatory damages only.
- D. Yes, for injunctive relief, compensatory damages, and punitive damages.

Question #: 16

Short Answer Questions: Answer only 3 of 5 ; 5 points each; 15 points total

- Williams, a painter, is painting the exterior wall on a new five-story building. Although a statute requires that hardhats be worn on all active construction sites, Williams was not wearing one. He is injured when a two-by-four falls on him from a higher floor. Williams claims that he lacked knowledge of the need to comply with the statute, since he was unaware of the statute. Will this excuse the violation?
- Wongsun lives next door to Brooks, who has a stable where she keeps horses. Wongsun learns that Brooks is going away for the weekend. While she is gone Wongsun takes Flora, one of her horses, for a two-hour ride through the woods. He returns Flora before Brooks comes home, but Malvolio, a sneak, tells Brooks about it. Has Wongsun committed conversion? Has he committed trespass to chattels?
- For each of the examples below, please answer the following:
 - Does an externality exist? If so, classify the externality as positive/negative (or both).
 - If an externality exists, determine whether the Coase theorem applies (i.e. is it possible/reasonably feasible to assign property rights and solve the problem?)
 - If an externality exists and the Coase theorem does not apply, argue which of the government's tools are best suited to address the issue: quantity regulation, taxes/subsidies, tradeable permits, or something else.
 - Carbon emissions from vehicles
 - Your upstairs neighbors throwing an awesome, but loud party
 - Bringing crying babies on a plane
- Yamato goes to Dr. Kildare, complaining of a lump in her breast. Kildare fails to take a biopsy. Later, after the lump has grown, Yamato goes to Doctor Rivera, who finds an advanced malignant tumor. The tumor is removed, and no sign of cancer is found in the surrounding tissue. However, Rivera advises Yamato that, because of the advanced stage of the tumor, she has a 50 percent risk of a recurrence. Had the tumor been taken out earlier (when she went to Kildare) the risk would have been 20 percent. Yamato sues Kildare, in a jurisdiction that has adopted the lost-chance approach to damages. Should the Honorable Fudd dismiss the case?
- Assume that Mendelssohn, a drummer, gets knocked off the stage by Brahms during a performance. He dies immediately from his fall, and his estate sues Brahms for wrongful death. Brahms pleads as a defense that Mendelssohn was contributorily negligent for standing behind Brahms at the edge of the stage during the crescendo. Assume that contributory negligence is a complete defense to a negligence action in the relevant jurisdiction. Assume also that the language of the applicable wrongful death statute is the same as the North Dakota wrongful death provision quoted here: Whenever the death of a person shall be caused by a wrongful act, neglect, or default, and the act, neglect, or default is such as would have entitled the party injured, if death had not ensued, to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation, limited liability company, or company which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured or of the tortfeasor, and although the death shall have been caused under such circumstances as amount in law to felony. N.D. Cent. Code §32-21-01. At trial, the Honorable Fudd instructs the jury as follows: If you find by a preponderance of the evidence that the decedent was contributorily negligent, and that his negligence was a proximate cause of the accident which led to his death, then you must find for the defendant. Is Fudd's instruction proper?

Question #: 17

Essays - Answer only 1 of 3; 55 points total (three extra credit points automatically awarded to any student bold enough to answer Essay #1) Essay #1 Ed Armbrister was walking home at 1:00 a.m. on Saturday, November 1, 2020, following his shift as a waiter at the Bull 'n Brains in Parsnippy, Thisstate. Just before he arrived at his house, Annie Brewster jumped from the bushes brandishing a handgun and demanded money. She was clearly jumpy and appeared to be high on drugs. When Ed reached for his wallet, Annie shot him. He remains in the Intensive Care Unit at Parsnippy Hospital in critical condition. Annie, who is 44 years old, was arrested later that day. Ed's wallet was found on her person. She turned out to be a career criminal and lifetime drug addict, who had served prison time for a number of crimes, including robbery, assault with a deadly weapon and statutory rape (due to an affair with a high school boy). During interrogation, she confessed to the crime. She told the police she had purchased the handgun that she used in the crime in August 2016. She bought it at a gun show in Parsnippy for \$75. The seller, Fred Tompkins, was the former owner of Leehigh Guns, a Parsnippy gun store. Annie told the police that Fred did not run any type of background check or ask her any questions. Leehigh Guns had its license to sell firearms revoked in August 2015 by the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF). The basis for the revocation was that Leehigh had been illegally selling guns over the last 10 years without doing proper background checks. The ATF, in what critics have called an unusual interpretation of its own regulations, allowed Fred to purchase Leehigh's inventory "for his own collection." Fred has since been selling these guns exclusively at gun shows. Ed was 25 at the time of the shooting. He lives with his wife, Alice and their infant son. The family does not have any health insurance. Alice has come to our firm for help suing those responsible for the shooting. Unless otherwise specified in the question, you are to assume that there are no state or federal statutes or regulations limiting the tort liability of sellers or manufacturers of guns.

A. Alice wants to sue Fred, the gun seller, for negligence. Assume for this question that Fred and Annie had never met before the sale. Fred admits that Annie looked "down on her luck" and "sketchy" and that she negotiated aggressively, almost to the point of begging, to get the price of the gun down from the \$175 that Fred initially wanted. The senior partner requests you to: (a) Draft a memo analyzing only the duty and scope of liability elements of this claim; (b) If there are additional facts we need, please identify them and specify why they are relevant; (c) Provide your opinion on the strength of our case on these two elements.

B. Alice also wants to pursue a product liability case against the manufacturer of the gun that was used in the shooting. The company is known as Roadkill Guns and Ammunition. She tells you that she believes the dangers in gun distribution are compounded by the industry's failure to equip guns with feasible safety features such as integral locks that would "personalize" guns and prevent their unauthorized use. While manufacturers long denied it was possible to design guns with this kind of technology, Alice's research has shown that several lawsuits have prompted at least one manufacturer to begin making and selling guns with these safety features. She asserts that this technology has been known and available to the industry for

many years and that industry engineers admitted in depositions in those prior cases that these locks could have been included in guns. The experts disagree about the cost of the devices. Estimates range from a cost of only a few dollars to over \$50 per gun. A recent case from the Supreme Court of Thisstate held that: We have adopted the doctrine of strict liability of manufacturers for product defects in section 402A(1) of the Restatement (Second) of Torts, which states: "One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer . . ." (citations omitted). "A design defect occurs when the product is manufactured in conformity with the intended design but the design itself poses unreasonable dangers to consumers." For a product to be unreasonably dangerous, it "must be dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics." The jury determines whether a product is unreasonably dangerous by using a risk-utility balancing test. Under this approach, "a product is defective as designed if the magnitude of the dangers outweighs the utility of the product." However, proof of an alternative design is neither a controlling factor nor an essential element that must be proved in every case." Id. Rather the circumstances of each case dictate which factors may be relevant. Id. The senior partner requests that you: (a) Draft a memo analyzing the elements of this claim, except for the scope of liability element (which another clerk is covering); (b) If there are additional facts we need, please identify them and specify why they are relevant; (c) Provide your opinion on the strength of our case on these elements.

Essay #2 Deep Quarries, Inc. owns a quarry in an outer suburb known as Quarryside. The quarry has been there for almost 100 years. When it was first set up, it was far away from the city, but the outer suburbs of the city have now spread out to it and beyond. Quarryside is an expensive neighborhood, made up of homes set in secluded woodland surroundings. In the early part of the twentieth century, the quarry was very busy, but the increased use of brick and concrete as construction materials has produced a decline in demand for stone from the quarry. For many years, the principal businesses of Deep Quarries have been cutting and polishing small, high-quality pieces of stone for use in graveyards. It conducted this business without complaint from its increasing number of new neighbors. Recently, Deep Quarries won a new contract, to provide large boulders to be used in making a breakwater at a yacht club. Work now begins at 7 a.m. each morning. Once a week, explosives are used at regular intervals throughout the day to cut stone from the quarry. Every working day, large trucks carry boulders out of the quarry in a steady stream from 7 a.m. until 7 p.m. The noise and dust from the work can be heard and felt throughout the suburb of Quarryside. Piers lives next to the quarry. He has sued Deep Quarries, seeking an injunction restraining the new use of the quarry. He says that his use and enjoyment of his property have been disturbed by the noise and dust from the quarry, and he claims that tiles have fallen from the roof of his house and that windows have been cracked by the explosions in the quarry. Advise Deep Quarries.

Essay #3 Gary bought a handgun for his girlfriend Paula to use for her personal protection. The gun was manufactured by Dryco Arms, Inc. Gary set up a target in the backyard of his house so that Paula could practice shooting the gun. The gun jammed while Paula was practicing, so she opened it up in an attempt to clear the jam. The jammed cartridge then exploded while the chamber was open. Paula was deafened by the noise of the explosion, which made a much louder noise than the usual sound of

the gun firing. She now has profound hearing loss in one ear, and tinnitus (constant ringing) and hyperacusis (painful hypersensitivity to noise) in the other ear. Paula has sued Dryco Arms, alleging that the handgun was defective. The box for the handgun carried the following warning: All guns can be dangerous if improperly handled. We strongly advise that you familiarize yourself with all mechanisms of this, or any gun, before putting ammunition into it. Do not carry with cartridge in chamber. Wear shooting glasses and hearing protection. Always point pistol in a safe direction. Never place your finger on the trigger unless you are ready to shoot the pistol. Always check chamber after removing magazine for cartridge in barrel. Do not dry fire, shoot pistol with empty chamber. Gary took the gun out of the box and handed it to Paula when she began to practice. She did not read the warning on the box. Advise Dryco. Assume that the incident occurred in a jurisdiction where the law of products liability is based on the Restatement (Second) of Torts, §402A.



MASSACHUSETTS SCHOOL OF LAW at ANDOVER

Torts – Prof. Olson

Final Examination – Spring 2022

Student ID#: _____

I. MULTIPLE CHOICE QUESTIONS (Answer all 20.) 30 points total

1. Joe Jessup was a professional football player. He enjoyed going to nightclubs and drinking alcohol. On one evening he was coming out of a bar when Freddie Fan grabbed him by the arm and said, "Aren't you the guy who dropped the pass in last Sunday's game?" Joe responded by taking a swing at Freddie, but he was so drunk that he missed him by a foot. Which of the following is true?

(a) Joe could recover from Freddie for battery, but only if he could show that he suffered actual harm;

(b) Joe could recover from Freddie for assault, even if he could not establish actual harm;

(c) Freddie could recover for assault from Joe, even if he knew that Joe was unable to land the punch;

(d) Freddie could recover for assault from Joe if Joe intended to punch him in the face.

2. Mike was jealous of Barbara because of her superior academic performance. When she wasn't looking, Mike put a plastic replica of a snake in her backpack. Barbara was getting ready for class when she pulled out her books and the plastic snake fell out, brushing her hands before it fell to the floor. She screamed in terror. Mike laughed. Which of the following is true?

(a) Barbara could recover damages from Mike for battery but only if a person of normal sensibility would be offended by the contact.

(b) Barbara could recover damages from Mike for assault, if she was put in fear of imminent harm;

(c) Barbara could not recover for the intentional infliction of emotional distress if she did not suffer severe emotional damages.

(d) All of the above.

3. Geraldine Gipp was a security guard at a large suburban mall. She saw Sam Sophomore, who was wearing a "letterman's" jacket displaying the symbols of a high school that had been her nemesis as a young woman. As Sam was walking toward the door leading to the parking lot, Geraldine called out to Sam, saying in a loud voice, "And just where do you think you're going?" Sam froze in fear. Could Sam recover damages from Geraldine for false imprisonment?

(a) Yes, because Sam could reasonably believe that Geraldine would use force if he continued.

(b) Yes, if Sam reasonably believed that Geraldine was armed;

(c) No, unless Geraldine intended to confine Sam;

(d) No, if Sam did not suffer actual damage from the confinement.

4. Eleanor Eastwick was running to catch a bus when she saw two men carrying a couch backing out of a doorway. She could have stopped but tried to squeeze between them and the lamppost so that she wouldn't miss her bus. She almost made it, but her foot caught Tom Treach, who dropped the couch on his toe. Could Treach recover damages from Eastwick?

(a) Yes, because her lack of reasonable care in assessing whether she could run past the men would constitute battery;

(b) Yes, if she knew that she was going to collide with the men;

(c) No, if she did not intend to cause any harm;

(d) No, if the men could have easily avoided her.

5. Bill told Jim to meet him at a bar downtown. Bill was an avid cyclist and frequently wore a cycling jersey and matching shorts. Jim arrived at the bar during Happy Hour, and there was a large crowd. Jim saw a guy in a cycling jersey with his back to the entrance, so Jim squeezed through the crowd until he was able to tap the guy on the shoulder. He yelped and turned around. It turns out it was not Bill, but someone who looked like him from the rear, who had a very tender shoulder from a recent crash. Did Jim commit an assault on the cyclist?

(a) No, because Jim didn't mean to cause any harm

(b) No, because Jim thought it was Bill

(c) Yes, if the cyclist genuinely experienced pain

(d) None of the above

6. Sarah and Elaine were shopping at a department store located in the mall. While Sarah was trying on a new dress in the dressing room, Elaine wedged a door stop under the dressing room door so that she could finish buying Sarah a surprise birthday present. The sales clerk took an extra minute to process the credit card purchase, so Sarah wound up pounding on the door, saying "Let me out!" After sixty seconds Elaine took the door stop away and pretended that it got stuck. Did Elaine commit the tort of false imprisonment?

(a) Yes, because Elaine intended to confine her.

(b) Yes, but only if Sarah suffered severe emotional distress.

(c) No, because Elaine did not intend to cause harm.

(d) No, because the confinement only lasted a short period of time

7. A managed care company was found liable for denying valid claims for health insurance coverage. The company was ordered to pay compensatory damages to a group of plaintiffs. To "make an example" of the insurer, the court also ordered the insurer to pay an additional \$10 million to deter other insurers from engaging in the same wrongful acts. The \$10 million award is an example of:

(a) Punitive damages

(b) Economic damages

(c) Non-economic damages

(d) Collateral source payments

8. A state statute requires machinery in industrial plants to include automatic shutoff switches accessible to each employee working on the machine. Provinzano Piping's equipment does not have these switches. Jason, a Provinzano employee, suffers an injury that an accessible shut-off switch would have prevented. Jason's best theory for recovery against Provinzano is:

(a) Assumption of risk

(b) Negligence per se

(c) Res ipsa loquitur

(d) Battery

9. Karen slips and falls in WallMart and is injured. Karen files a suit against WallMart for \$500,000. Under a “pure” comparative negligence rule, Karen could recover damages from WallMart:

- (a) Only if both parties were equally at fault
- (b) Only if Karen was less at fault than WallMart
- (c) Only if Karen was more at fault than WallMart
- (d) Only if Karen was less than 100% at fault

10. Linda, a driver for Swift Transportation, causes a five-car accident on an interstate highway. Linda and Swift are liable to:

- (a) All those who are injured.
- (b) Only those whose injuries could reasonably have been foreseen.
- (c) Only those whose cars were immediately ahead and behind Linda’s vehicle.
- (d) Only those who do not have insurance.

11. In *Palsgraf v. Long Island Railroad Co.*, foreseeability was an issue. The question addressed by the court was:

- (a) Was it foreseeable to the plaintiff (Ms. Palsgraf) that the scales would fall?
- (b) Was it foreseeable to the plaintiff (Ms. Palsgraf) that someone in the train station would be carrying explosive fireworks?
- (c) Was it foreseeable to the passenger carrying the fireworks that they might explode and injure someone?
- (d) Was it foreseeable to the railroad employee helping the passenger onto the train that doing so might lead to injury to Ms. Palsgraf or another bystander?
- (e) Was it foreseeable to Ms. Palsgraf that her injury would have been caused by an explosion?

12. Driving his sport utility vehicle negligently, Winnie crashes into a streetlight. The streetlight falls, smashing through the roof of a house, killing Piglet instantly.

But for Winnie's negligence, Piglet would not have died. Regarding the death, the crash is the:

- (a) Cause in fact
- (b) Intervening cause
- (c) Proximate cause
- (d) Superseding cause

13. A physician performed scheduled surgery on her patient's right ear for a condition caused by prolonged and repeated infections in that ear. During the surgery, the physician determined that her patient had been particularly susceptible to this condition due to a previously unsuspected anatomical abnormality. The physician reasonably believed that this same abnormality was likely to exist in the patient's left ear. Though the patient had not had many infections in the left ear, if a similar course of recurring infections were to transpire involving that ear, it would probably develop the same condition as the right and require surgery. The physician therefore decided to perform surgery on her patient's left ear, although she had received his consent only to operate on the right ear. The surgery was performed with due care and was successful. In an action by the patient against the physician:

- (a) Patient will not recover because the extension of the operation was successful.
- (b) Patient will not recover because the extension of the operation was carried out with due care.
- (c) Patient will recover at least nominal damages on a negligence theory.
- (d) Patient will recover at least nominal damages on a battery theory.

14. A worker at a New Jersey oil refinery was severely burned when a pipe carrying hot oil exploded. The worker brought a negligence action against the company that manufactured the pipe. At trial, the worker established what happened and the injuries he suffered. He also presented evidence that the pipe burst because it had corroded at a higher than normal rate, which according to testimony of the worker's experts indicated a defect in the manufacture of the pipe. At the close of the worker's case, the manufacturer moved for a directed verdict. The court should:

- (a) Deny the motion, because the jury could find that the premature corrosion of the pipe would not have occurred absent negligence by the manufacturer.

(b) Grant the motion because the worker has not established that the manufacturer was negligent.

(c) Grant the motion because the pipe was not in the manufacturer's possession when it exploded.

(d) Deny the motion, because the oil refinery should be strictly liable for engaging in an ultrahazardous activity.

15. Tom and Nicole, once married to each other, had gone through a bitter divorce. The divorce awarded custody of the couple's five-year-old son to Nicole, with visitation for Tom. On one weekend visit, Tom disappeared with the boy. Nicole was greatly distressed and called Tom's parents weekly, asking if they knew where their son and grandson were. The parents knew exactly where they were and even sent their son money to support him while he was on the run. But Tom's parents always told Nicole that they knew nothing. Three years later, the police arrested Tom and returned the boy to Nicole. If Nicole sues the parents for intentional infliction of emotional distress, will she prevail?

(a) Yes, because the parents acted in deliberate disrespect of a high probability that their actions would cause Nicole to suffer emotional distress.

(b) Yes, because the parents enabled their son to stay on the run by supporting him.

(c) No, because Nicole has not suffered physical harm.

(d) No, because Nicole was never in a zone of danger.

16. Dr. Pam was standing on the street corner across from the hospital. Since she was the chief of surgery in the hospital, she had crossed this street many times. Dr. Pam carefully looked both ways before crossing the street and then started to walk forward. A car pulled around the corner, speeding and running a red light, and hit Dr. Pam. The driver of that automobile was named Jack. Several other doctors saw the accident and immediately ran to Dr. Pam's aid. The automobile had crushed most of her body including her skull. Unfortunately, Dr. Pam appeared to have died instantly from the injuries. Dr. Pam was married to Bill. Bill was a local investment banker and had substantial income of his own. Bill and Dr. Pam had three children. The children were ages 2, 5, and 7. Bill will seek recovery from Jack for medical bills and pain and suffering suffered by Dr. Pam. Most states would hold that:

(a) Bill cannot recover medical bills and pain and suffering for Dr. Pam.

(b) Bill can recover medical bills but not pain and suffering for Dr. Pam.

- (c) Bill can recover pain and suffering but not medical bills for Dr. Pam.
- (d) Bill can recover medical bills and pain and suffering for Dr. Pam.

17. The Daily News, a local newspaper, wrote an editorial. It seems that the author of the editorial had been doing some checking and found out that there were several ethical violations against several lawyers in the state. In a state of 5000 lawyers, 100 lawyers had been found guilty of ethical violations during a 10-year period. The violations ranged from not completing the required number of CLE credits to actually stealing a client's money. The editorial said, "The situation in this state is serious. All the lawyers in this state are crooks. They are all engaging in ethical violations. The problem is, not all of them have been caught." Susan Doe, a lawyer in that state, sued the newspaper for defamation. Ms. Doe had never been found guilty of an ethical violation. The best answer concerning this action is:

- (a) She will win since she is a member of the class that was defamed.
- (b) She will lose since the defamation concerns all members of a large class, even though she is a member of that class.
- (c) She will win since the statement is defamatory and false. Not all of the lawyers had committed ethical violations.
- (d) She will lose since it is impossible to prove she has not committed some type of ethical violation over the whole course of her career.

18. Bob and Carol own a house in a residential area. Their home is a short distance from the corner. The corner lot remained vacant for some years. A corporation bought the corner lot and had it rezoned for a commercial use. The corporation then built a large grocery store on the lot. The grocery store is open 24 hours a day. The increased traffic around the store has started to cause noise in the area. In addition, the store employees do not do a good job of cleaning up the parking lot. Bob and Carol constantly have to pick up debris that is left in the grocery store parking lot and then blows into their yard. If Bob and Carol want to get some recovery, the likelihood of success is:

- (a) Good, if they can get the local attorney general to sue for public nuisance.
- (b) Bad, since the zoning change bars any action against the grocery store.
- (c) Good, if they sue for the blowing debris as a private nuisance.
- (d) Bad, since zoning is a non-reviewable governmental function.

19. John Jones was running for governor of his state. For a two-day period, just before the election, Mr. Jones seemed to have disappeared. No one knew where he was. The local newspaper wrote the following article. "We have just been informed that Mr. John Jones, candidate for governor, spent two days having a romantic weekend with his girlfriend. We understand that Mr. Jones' wife is extremely upset, but is denying that her husband has a girlfriend." Although John Jones had been leading in the polls, his numbers fell dramatically. The election came so suddenly after the story appeared in the newspaper, Mr. Jones did not really have time to refute it. It turns out that the story was false. Mr. Jones was, in fact, checking on his elderly mother who lived in a different state. His mother had several health problems and needed some attention. If Mr. Jones sues the newspaper, which of the following is true?

- (a) He is a private figure.
- (b) He is a public figure since he is running for office.
- (c) He is a public figure if he had been of general notoriety before the election.
- (d) He is a public figure since romantic affairs by married men are always public information.

20. Joan was a hardworking law student. She was in a second year and near the top of the class. Several students were teasing with her one day, and said they were amazed she was now doing advertisements for one of the law book publishing companies. When she said she didn't know what they were talking about, they showed her an advertisement they had received in the mail. Sure enough, the ad showed Joan, sitting in the library, reading a book published by the law book publisher. The picture was one a friend of hers had taken and posted on one of the social network pages on the internet. If Joan sues the law book publisher, what is the likely result?

- (a) She will lose since the photo was taken in a public place.
- (b) She will lose since the photo was found on a public social network internet site.
- (c) She will win since the photo intrudes upon her seclusion of study.
- (d) She will win since the law book publisher used the photo for commercial purposes.

II. Short Answer Questions (Answer *only 3 of 5*); 30 points total

A. Pam asked Freddie if she could borrow her SUV in order to transport her used furniture to New Start, a local non-profit. Freddie hesitated to say yes, because she knew of Pam's propensity for speeding and her numerous prior traffic violations. Despite her reservations, however, because she believed in the mission of New Start, Freddie agreed to let Pam use her SUV and gave her the keys.

That night, Pam drove carefully and dropped off her furniture at the New Start resale store. Eager to get home, she sped as much as 25 miles over the speed limit on the return drive. While rounding a curve on I-55, she lost control of the SUV, which tumbled off a ramp and down a hill, crashing into a small tree. Mike happened to witness the incident and ran down the hill to help, but in doing so, he stumbled in a hole and severely sprained his ankle. Pam emerged from the SUV dazed but without a scratch.

The SUV, however, was crumpled. An ambulance took Mike to the hospital, where the E.R. doctor taped up his ankle, gave him crutches, and prescribed 12 weeks of physical therapy. The sprain prevented Mike from opening his new home remodeling business for another three months.

1. Can Mike recover his medical and therapy costs? From whom? Explain.
2. Can Mike recover the income lost from the three-month delay in opening his business? From whom? Explain.
3. Discuss any issues of joint and several liability as applied to Mike's claims.

B. A commentator on tort law recently made the following observation about compensatory damages available in tort:

Tort damages do not cover loss of life as such. Therefore the primary aims of a utilitarian theory of tort – either Posner's or Calabresi's – cannot be achieved. Moreover, neither Posner's aim of deterring substandard conduct, nor Calabresi's policies, are able to justify the limited damages for wrongful death actually available in tort. In short, a utilitarian theory of fault-based tort (Posner) or strict tort (Calabresi) collapses when it comes to wrongful death.

Write a short essay assessing the commentator's assertions. Also please consider whether there are non-utilitarian (fairness-based) reasons for omitting loss of life as such from tort's list of compensable injuries.

C. Conglomerate Chemicals Corporation manufactures chemicals at a plant in East Dakota. The processing of raw materials into chemicals involves a complex smelting process that gives off emissions containing trace amounts of various chemicals, including quasimonomethane. Over a period of years, the particles in these smokestack emissions settle on surrounding property. Green is an organic farmer who lives a mile from Conglomerate's plant. In 2008, he learns that he cannot get the vegetables grown on his land certified as organic anymore, due to traces of quasimonomethane the plants have absorbed from the soil on his farm. He wishes to sue Conglomerate.

Conglomerate argues that it is not liable for trespass, because it had no intent to deposit chemicals on Green's property. If it moves to dismiss Green's case on this ground, how is the court likely to rule?

Is Green's proper remedy in trespass or in nuisance? Explain.

D. Bowser Flea and Tick Prevention Spray, which is poisonous, looks like Dr. Pepperoncini Cola, a popular soft drink, and comes in a soda-like bottle with an easily removable lid. The bottle has a warning, reading: "This product is poisonous. Keep out of reach of children." Little Jimmie, three years old, finds a bottle of spray under the kitchen sink, pops the lid off, and drinks the contents of the bottle, making himself seriously ill in the process. Could Bowser be strictly liable for Jimmie's injuries? Could Little Jimmie recover under any other products liability theory? Be sure to fully explain your answers.

E. Mr. Transpack is driving his car when he hits a pedestrian, Jelly Belly. Jelly files a personal injury claim against Transpack, claiming he's wheelchair bound. Transpack's insurance investigator doesn't believe Jelly is as injured as he says he is. The investigator gets a tip that Jelly is going to be at the park for a picnic, and sure enough, at the appointed time, Jelly shows up at the park. The investigator sits 50 yards away, taking photographs of Jelly as he runs around and contorts himself into a pretzel. Someone mentions to Jelly that he's being photographed. He sues the investigator for invasion of privacy. Will Jelly recover? If so, for what variety of invasion of privacy? Be sure to fully explain your answers.

III. Essay Questions (Answer *only 1 of 2*); 40 points total

A. Camarata Excavating Company was hired by Franklin City to do excavation and repair of a City sewer line which was buried beneath the public street near Bilbo Baggins residence. Also buried beneath the street was a natural gas transmission line maintained by Putrescent Gas Company. Camarata's project manager requested that Putrescent provide constant surveillance of Camarata's excavation work near the gas line. Putrescent declined this request, explaining that the Gas Company was short-staffed and couldn't spare the personnel for constant

surveillance. Putrescent did provide an inspector who came to the site to examine the exposed gas line prior to its reburial and found it to be in good condition.

About six weeks after Camarata had completed its work of excavation and sewer repair, Bilbo Baggins came home and turned on the lights, whereupon his house blew up, killing Bilbo. A spark from the light switch ignited gas that had escaped from the buried transmission line. An investigation showed that movement of earth brought about by Camarata's excavation activities produced strain on the gas transmission line which led to the eventual failure of a coupling joining two sections of the gas line, which in turn led to the escape of the gas.

Bilbo's widow, Mariah Baggins, has brought suit alleging that Camarata Excavating Company was negligent and also that Putrescent Gas Company was negligent. Each defendant denies that it was negligent and asserts that the other defendant was negligent. A statute of the State of Orono abolishes common law "joint-and-several liability" for negligent tortfeasors, and instead imposes liability "in proportion to defendant's percentage of fault." (The parties have stipulated that there was no negligence on Bilbo's part.)

In addition to the negligence claims, Mariah Baggins asserts two claims of strict liability. First, she says that Putrescent Gas Company is strictly liable for the harm caused by the gas explosion. (In thinking about this claim, you should assume that Putrescent was not negligent, and that the excavator, Camarata, was negligent.) Second, she says that Franklin City is vicariously liable for harm caused by the negligence of its contractor, Camarata Excavating Company. (In thinking about this claim, you should assume that Camarata, which is not a strict liability defendant, has been found negligent.)

In defense against strict liability, the gas company says that the active negligence of the excavating company is the legal cause of the break in the gas line, superseding any strict liability on the part of the gas company. In defense against vicarious liability, the city emphasizes that it farmed out the job of excavating to a reputable company with expertise, which the city lacks. Both strict liability defendants note that most homeowners already have insurance covering injuries that might be caused by a gas explosion and argue that such insurance eliminates any need for strict liability.

Discuss the main issues of law and policy raised by Ms. Baggins's negligence claims against these defendants. Please also discuss the main issues of tort doctrine and policy raised by Mariah Baggins's claims of strict liability against Putrescent Gas and Franklin City, and by the defendants' rejoinders.

B. Every Saturday morning, Mollie takes her six-year-old daughter to swimming lessons at Bushwood Fitness Center. She and her daughter are not members of the

Center: She has merely bought a series of swimming lessons given in the Center's teaching pool by Center staff. Normally, Mollie sits beside the swimming pool while her daughter's lesson proceeds. One Saturday morning, she left the side of the pool while her daughter was swimming. She wandered around the Center, inspecting the facilities. She watched some racquetball games, looked into the beauty shop and cafeteria, then went into the weight room. She decided to try out one of the weight machines.

Remembering her healthy youth, Mollie selected a very heavy weight. She released the brake on the machine, which sustains the weight until the user is ready to exercise. She rapidly discovered that she cannot sustain the weight that she has selected. Her body crumpled under the weight. Mollie found that she could only get out from underneath the weight by twisting and falling out of the machine. In doing so, she severely injured her back.

As a result of the injury to her back, Mollie went into shock and suffered a heart attack. The manager of the Center, Mark Costanzo, who had recently been re-certified by the Red Cross in CPR, arrived on the scene some five minutes after the initial call. When he arrived, Mollie was in cardiac arrest on the weight room floor. Though there was a defibrillator on the wall outside the weight room, Mark did not remove it from its bracket. In fact, the canvas on top of the machine had a fairly thick layer of dust on it when investigators later arrived to inspect the scene.

Mark neglected to obtain a pulse reading from Mollie because he couldn't detect one on her wrist, and he mistook her jugular vein for her carotid artery on the side of her neck. He was so anxious that he forgot to clear Mollie's airway, and mistook the compressions, administering the appropriate amount for a young baby rather than an adult. By the time the paramedics arrived, Mollie was in very rough shape, and she died in the hospital four days later after experiencing intense pain for a considerable portion of her stay in the ICU.

The weight machine in question is manufactured by Total Body Vibrations, Inc. It bears a warning sticker next to the place where the user selects the weight to be lifted. The warning says:

"WARNING. Always use spotters when you lift. Do not use this equipment without first receiving instruction or reading the information booklet."

A "spotter" is someone who stands by the machine while the user is using it, to watch, encourage, and give assistance if needed. While in hospital before her death, Mollie told a nurse she did not know what the term "spotter" meant.

Members of the Center are given instruction in how to use the weight machines before they are allowed to use the weight room. Although use of the weight room is

supposed to be confined to Center members, there is no sign on the door of the weight room to that effect, nor has the Center put up any warning sign of its own by the machine. The instruction booklet was not left by the machine.

Mollie's husband wishes to sue both Bushwood Fitness Center and Total Body Vibrations, Inc. Advise Mollie's husband about the issues that would be raised in these actions and what sort of damages the family might be entitled to. (Assume that the incident occurred in a jurisdiction that has not modified the traditional rules of occupier's liability in any way, and where the law of products liability is based on the Restatement (Second) of Torts, §402A.)

HAPPY SUMMER!!!



MASSACHUSETTS SCHOOL OF LAW at ANDOVER

TORTS FINAL EXAMINATION

SPRING 2023

May 22, 2023

YOUR STUDENT ID # (Five – 5-Digits)

INSTRUCTIONS:

You may read the instructions that follow, and then go immediately to read and sign the Student Examination Honor Pledge. You are not to look beyond the Student Examination Honor Pledge until you are instructed to begin the exam.

If you have not downloaded this Final Exam from the Examsoft platform prior to the start time of the exam and are not ready to start taking the exam immediately once the professor/proctor calls for the exam to begin, you will be required to write the exam rather than type it.

YOU ARE NOT TO HAVE A CELL PHONE, OR ANY OTHER DEVICE THAT CAN TRANSMIT AND/OR RETAIN INFORMATION, ON YOUR PERSON DURING THIS EXAM. POSSESSION OF A CELL PHONE OR SUCH OTHER DEVICE SHALL BE TREATED AND DEALT WITH AS CHEATING, EVEN IF THE DEVICE IS NOT TURNED ON.

YOU MAY WEAR A JACKET WHILE TAKING THE EXAM, BUT IF YOU TAKE IT OFF YOU ARE TO IMMEDIATELY PLACE IT AT THE SIDE OR BACK OF THE ROOM. IF YOU START OFF WITHOUT A JACKET, YOU MAY PUT ONE ON WITH NOTIFICATION TO, AND PERMISSION FROM, THE PROFESSOR/PROCTOR.

IF YOU LEAVE THE CLASSROOM, YOU MUST TAKE YOUR JACKET OFF AND LEAVE IT AT THE SIDE OR BACK OF THE ROOM.

Please take ONE (1) blue book and use it for scrap. **Do not turn that blue book in. If you type your exam, all answers should be on the EXAMSOFT platform. If you write your exam long-hand, you should place the exam booklet inside a bluebook and place any other bluebooks inside the first bluebook.**

WHETHER YOU WRITE OR TYPE, YOU ARE TO TURN THIS EXAM BOOKLET IN WHERE INSTRUCTED WHEN YOU HAVE FINISHED YOUR EXAM. IF I DO NOT HAVE YOUR EXAM BOOKLET, WITH YOUR ACCEPTANCE OF THE HONOR CODE FOLLOWING THESE INSTRUCTIONS, I WILL NOT CORRECT YOUR EXAM AND YOU WILL RECEIVE A GRADE OF "0" AS A SCORE ON YOUR FINAL EXAM, EVEN IF YOU HAVE UPLOADED AN ANSWER ON EXAMSOFT.

Please do not identify yourself in any way other than by student ID number. Please do not write any information in your exam booklet that might reveal who you are.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. You may only use the scrap blue book as scrap paper. You may also use this exam booklet for notes and scrap as long as you do not insert them into the answer spaces if you are writing (rather than typing) your exam. If you are typing on Examsoft, you may use this exam booklet for scrap as well. Even if you are writing, you may use the areas of this booklet not designated for answers for notes and scrap.

WHETHER YOU TYPE OR WRITE, THIS HARD COPY EXAM BOOKLET IS THE OFFICIAL EXAM. IF MINOR TYPOS ARE FOUND AFTER THE EXAM IS POSTED ON EXAMSOFT, CORRECTIONS WILL BE GIVEN SO THAT YOU CAN MAKE THEM ONLY ON THIS HARD COPY OF THE EXAM.

This examination consists of THREE PARTS: (1) 20 Multiple Choice Questions; (2) One (1) Essay Question (choose one of two); and (3) Three (3) Short Answer Questions (choose three of five).

If you are writing your exam:

Please write "WRITTEN" on the first page of your exam booklet near the top.

Please place your answers to Part One on the exam booklet (circling your choice on the multiple choice questions); you should write your answers to Parts Two and Three in your bluebook(s), I WILL NOT CORRECT OR GRADE ANYTHING YOU PUT IN YOUR SCRAP BLUE BOOK UNDER ANY CIRCUMSTANCES.

Please make each answer readable in terms of neatness and the size of your handwriting. (I will not use a magnifying glass to read your answers.) Please answer the questions responsively; don't provide information not asked for in the question. For example, if the question asks, "Who wins?," please state the name of the person who wins; don't state why he or she wins. Please state your reasoning when a question asks for it.

If you are typing your exam:

If you are typing your exam, please write "TYPED" on the front of this Exam Booklet. You will be required to provide your answers on Examsoft. I understand that your time clock will not begin until you start the exam on Examsoft, regardless of when I call for you to begin. **Whether you have standard time or an extra-time accommodation, the official time for your exam shall be the time I tell you to begin your exam at the beginning of its administration, NOT the time your Examsoft time clock says. For this reason, you MUST begin your exam immediately when I call for the exam to begin;** it should take no more than a minute or two for you to start your exam on Examsoft (see above) and I will provide you five extra minutes to deal with the Examsoft startup. This will be the case whether you are a standard time taker or an extra-time accommodations taker. When I call time, you are to close out your Examsoft administration and upload your exam *immediately* if you type, and you will hand in your written answers immediately if you write.

Please place your answers to Parts One, Two, and Three in the appropriate spaces provided on the Examsoft platform. Please ensure that the printed exam that I correct is in the order presented in this exam booklet and that all questions/parts are properly labelled. **I WILL NOT CORRECT OR GRADE ANYTHING YOU PUT IN YOUR SCRAP BLUE BOOK, OR IF YOU WRITE IN THIS EXAM BOOKLET, UNDER ANY CIRCUMSTANCES.**

You have THREE HOURS (180 minutes) to complete this exam if you are entitled to standard time.

You have FOUR HOURS AND THIRTY minutes (270 minutes) to complete this exam if you are entitled to time and one-half.

You have SIX HOURS (360 minutes) to complete this exam if you are entitled to double time.

There is a bathroom book at the front of the room. Please sign out and in when you leave the room. Since any pen I put out for each bathroom book "wanders" soon after the first person writes in the book, please use your own pen or pencil to sign out and in.

You are to only turn in your exam booklet with your Student ID (not your name) and your confirmed honor code (your Student ID placed in the signature line in place of your name).

You may leave when you are done and have turned in your exam booklet as long as you are quiet and courteous to your classmates who are still taking the exam. If you breach this courtesy, I will instruct you to take your seat and remain quietly until the exam is done.

GOOD LUCK

STUDENT HONOR PLEDGE

In taking this examination, I hereby affirm, represent and acknowledge, both to the professor and the Massachusetts School of Law community, that:

1. I understand that the professor will not grade my examination, and I will suffer the consequences of not having submitted a final exam (specifically, failure of this course), if I fail to place my full student identification number in the signature space below. Placement of my student identification number below will serve as a substitute for my signature, and carry the full weight of my personal signature in making this pledge on my honor;
2. I will not give or receive any unauthorized assistance on this examination;
3. I understand that this is a closed-book examination and, I am not permitted to use papers, personal effects, electronic devices, or any other material that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, whether the same be located on my person, near me, in the exam room, or anywhere else in the building or on the grounds;
4. I have placed all electronic devices, papers, personal effects, and other matter that I brought into the room at the front, side or back of the room as instructed by the exam proctor, with all electronic devices being powered off;
5. I have not placed in bathrooms or other areas in the building or grounds any papers, personal effects, electronic devices, or any other matter that could provide unauthorized assistance in completing this examination, create any unfair advantage in completing this examination, or otherwise frustrate the honest administration of this examination as a closed-book examination, either for my personal use or the use of anyone else;
6. I will not speak to or communicate with any other person taking this exam until its administration is completed (when *everyone* is finished and all the exam materials have been turned in). This also applies while I am waiting in line to hand in the exam or if I complete or leave the exam before others;
7. I will not identify myself in any way or frustrate the anonymous grading of this exam;
8. I will faithfully follow any additional instructions the exam proctor provides orally during the exam;

9. Other than instructions that the professor may have given out in advance, I have heard nothing about the specific contents of this examination prior to its commencement;

10. I understand and acknowledge that MSLAW's honor code requires me to report observed violations of these provisions as well as the MSLAW Honor Code.

Signed under the pains and penalty of perjury.

FULL STUDENT ID NO.
(DO NOT PUT YOUR NAME HERE)

**DO NOT TURN THE PAGE AND BEGIN UNTIL THE
PROFESSOR/PROCTOR INSTRUCTS YOU TO DO SO.**



MASSACHUSETTS SCHOOL OF LAW at ANDOVER

Torts – Prof. Olson

Final Examination – Spring 2023

May 22, 2023

Student ID#: _____

INSTRUCTIONS

The total time for the exam is 3 hours. The exam has 2 targeted essays (answer *only* one of three), 5 short answer questions (answer *only* three of five), and 20 multiple-choice questions. Total points for each section are listed in the heading for that section.

Be sure to answer the questions I ask – respond directly to the call of the question. Do not waste your time with speculation for which neither the question nor the answer calls. Brevity and precise analysis will be rewarded; rambling answers will not (and will cost you valuable time). Thus, please organize your answers carefully.

Note though that adequate answers may require discussion of related issues or application of missing facts, as long as they are logically presented by the question. Also, despite the role that I designate in the question, you should, in order to fully answer the question, identify and address arguments that would be made by another party or participant and are not specified in the question.

If you find yourself running out of time, you might try, at least, to answer. You may receive some credit for this effort. Good luck and thank you for a semester I greatly enjoyed.

I. MULTIPLE CHOICE QUESTIONS (Answer all 20.) 30 points total

1. Trent wants to scare William. He picks up a ball on the playground and throws it directly at William's head. Trent does not intend to actually hit William. William is aware that Trent has a terrible arm. He watches as the ball flies by and hits Virginia, who is playing jump rope behind William with her back to him. From that point on, Virginia became afraid every time she saw Trent. If Virginia sues Trent, which of the following statements is the most accurate?
 - a. Virginia can sue for assault and battery, because Trent's intent to scare William transfers to Virginia.
 - b. Virginia can sue for battery only, because Trent hit her with the ball.
 - c. Virginia can sue for assault only, because Trent did not intend to hurt anyone.
 - d. Virginia cannot sue for assault or battery.

2. Daniel drives a cement truck for a living. As he is proceeding carefully through an intersection, Tabitha drives her car through a stop sign and collides with the truck. There was no way for Daniel to avoid the collision. Tabitha is killed instantly. Her

father, Perry, is driving the car behind Tabitha. When he sees Tabitha's body, he suffers severe emotional distress. Neither Perry nor Daniel is injured. Perry is so upset about witnessing his daughter's death that he has to be hospitalized. Perry sues Daniel for negligent infliction of emotional distress. Daniel countersues Tabitha's estate. Which of the following statements is the most accurate?

- a. Daniel cannot recover, because he is unrelated to Tabitha.
 - b. Perry cannot recover, because Daniel was not negligent.
 - c. Daniel cannot recover, because he was not injured in the accident.
 - d. Perry cannot recover, because he was not in the zone of danger created by the accident.
3. Trent wakes up on Tuesday morning and realizes that he is out of milk for his coffee. Though he is still sleepy, he decides to drive to the supermarket. In the parking lot, Trent collided with Vince's vehicle. Trent was traveling five miles per hour, and Vince was stopped. As a result of the bump, Vince bumped his head on the steering wheel. Several years earlier, Vince was in a hockey accident that resulted in bone fragments inside his skull. The bump against the steering wheel caused one of the fragments to shift, piercing his brain. Vince goes into a coma for three weeks. When he awakens, he is unable to move his legs. He sues Trent. Which of the following statements is most accurate?
- a. Vince will prevail, because Trent caused his injuries.
 - b. Trent will prevail, because it was unforeseeable that Vince would suffer severe injuries for such a minor accident.
 - c. Vince will prevail, if he is no longer able to play hockey.
 - d. Trent will prevail, because Vince would not have been injured but for the bone chips.
4. Trent is driving on the road at a reasonable rate of speed, below the speed limit, when he collides with Vince. Two seconds before the accident, a large bee flew into Trent's open window. Trent is very allergic to bees. Upon seeing the bee fly directly toward his nose, Trent jerked reflexively. It is at that exact moment that Trent hit Vince's car. Which of the following statements is most accurate?
- a. Trent was negligent in driving with his window open, knowing that he is allergic to bees.
 - b. Trent is not responsible for Vince's injuries, if he reacted as a reasonable person under the circumstances would have.
 - c. Trent is liable for Vince's injuries, because a reasonable person does not drive while sleepy.
 - d. Trent is not liable, because the bee is a superseding, intervening cause of the injury.
5. After a long, stressful day at work, Marvin realized that he really needed a cold soft drink, but that there were none in his house. Marvin felt too tired to drive down to the local grocery store himself, so he asked his son Junior to take his car out and bring the soft drink home. Even though Junior had no insurance, and suffered from an acute mental impairment that affected his motor skills and depth perception, he

agreed to go so as to not upset his father. On the way to the store, Junior's car crossed halfway over the center line and slammed head-on into an oncoming vehicle driven by Stacy. Stacy suffered severe physical injuries. According to the police report, Stacy was speeding at the time of the wreck. Assuming that this event occurred in a pure comparative negligence jurisdiction, in an action by Stacy against Jr. for negligence, what is the most likely legal outcome?

- a. Junior is liable under the doctrine of negligence per se.
 - b. Junior cannot be liable for negligence since he is mentally ill and Marvin ordered him to drive the car.
 - c. **Junior is liable for negligence.**
 - d. Junior cannot be liable since Stacy was contributorily negligent.
6. The city of Middletown hosted a mayoral campaign debate in Public Square. Shortly following the event, the incumbent candidate, Mayor Madison approached his opponent Mr. Hooper backstage. Mayor Madison shook Mr. Hooper's hand, leaned closely, and whispered, "I know that you're secretly a cross-dressing bisexual. I doubt that your constituents would support you if they knew this fact." Mayor Madison was not aware that the microphone attached to his lapel was still turned on, and his statements were heard by an audio technician working for the local television news station. The audio technician chose not to go public with the statement he overheard. Assuming the statement was false; could Mayor Madison be found liable for defamation?
- a. **Yes, so long as Mr. Hooper can show that she speech caused him economic harm.**
 - b. No, unless Mr. Hooper can first show that Mayor Madison made his statements negligently with regard to their falsity.
 - c. No, because the audio technician decided not to publish the statement.
 - d. Yes, Mr. Madison's statement was slander per se.
7. Michael, an Olympic gold-medalist, has never agreed to endorse any consumer products. One day, however, Michael was flipping through a magazine at a news stand when he came across an advertisement for *Rectal Remedy* a popular, medicinal hemorrhoid jelly. The ad featured a photograph of Michael superimposed next to an enlarged bottle of the product. Michael does actually suffer from hemorrhoids. Michael could bring tort actions for:
- a. False light, public disclosure of private fact, and maybe libel
 - b. Misappropriation, libel, and maybe false light
 - c. **Misappropriation and maybe public disclosure of private facts**
 - d. Libel, public disclosure of private fact, and maybe misappropriation
8. Steve was fly-fishing from a large rock alongside the Red River when the weather suddenly turned stormy. Aware that the area was known for flash floods and mudslides, Steve quickly packed his fishing equipment, and prepared to head back towards the road where his truck was parked. Because the wet ground had become so slippery, Steve walked along the riverbank until he was able to find a footpath

that was less steep. On his way up the hill, Steve accidentally stepped onto a bear-trap hidden underneath some foliage, between two bushes. Steve did not realize it at the time, but the footpath he had found was actually located on private property owned by Billy. Billy had set up the trap in order to guard his home against both bears and thieves. Steve suffered severe leg injuries and ultimately needed to have his foot surgically removed. What is the most likely legal outcome of a negligence action by Steve against Billy?

- a. Billy will prevail since Steve was trespassing.
 - b. Steve will prevail so long as Billy was aware trespassers might walk the footpath.
 - c. Billy will prevail since he has a right to protect his private property.
 - d. Steve will prevail since private necessity is a valid rejoinder to the accusation that Steve trespassed.
9. Cynthia became very ill two days after undergoing a non-specialized medical procedure performed by Dr. Pratt. Cynthia's family took her to the Emergency Room, where Dr. Jackson diagnosed her with a bacterial infection, and prescribed her with antibiotics. Cynthia followed Dr. Jackson's instructions, but unfortunately her condition rapidly deteriorated to the point of death. According to medical experts hired by Cynthia's surviving family, Cynthia's illness was caused by a severe allergy to Catadine, a medication administered to Cynthia by Dr. Pratt during her procedure. Her family has brought a malpractice lawsuit against Dr. Pratt. Which of the following facts below would be the least useful to Dr. Pratt in his defense?
- a. Dr. Jackson negligently failed to assess the full range of Cynthia's symptoms so that he could diagnose her correctly.
 - b. Dr. Pratt practices medicine in a part of the country where Catadine is still a commonly prescribed drug.
 - c. Dr. Jackson was aware that Cynthia was suffering from a severe Catadine allergy, and purposefully prescribed the wrong medication.
 - d. Dr. Pratt apprised Cynthia of all health risks involved in the procedure.
10. Derek, a 35-year-old lifeguard and emergency medical technician, was jogging along the beach when he overheard Bethany, an eight-year-old girl, screaming for help. As Derek approached the tide, he noticed that Bethany was alone in the water, and trying desperately to keep her head above the waves. Rather than save her from drowning, however, Derek continued jogging. Assuming that Derek owned the land where this accident occurred, could Derek be found liable in tort for Bethany's death?
- a. Yes, because Derek assumed a duty to act affirmatively when he became a lifeguard and emergency specialist.
 - b. No, because Derek did not cause Bethany to fall into the hole, and moreover the facts do not indicate that Derek has any blood relationship with Bethany.
 - c. No, because a beach does not qualify as an attractive nuisance.
 - d. Yes, if Derek had opened the land up for public access.

11. Trent wants to scare William. He picks up a ball on the playground and throws it directly at William's head. Trent does not intend to actually hit William. William is aware that Trent has a terrible aim. He watches as the ball flies by and hits Virginia, who is playing jump rope behind William with her back to him. From that point on, Virginia became afraid every time she saw Trent. If William decides to sue Trent, which of the following statement is most accurate?
- William has claims for assault and attempted battery.
 - William has a claim for assault.
 - William has a claim for battery.
 - William does not have a claim against Trent.
12. Rodney and Dodd were playing basketball when Dodd accidentally slipped and fell during a fast break. Rodney began to chuckle as he picked up the loose ball. Once Dodd rose up from the ground, he pulled a sharp blade from his jacket, and gestured it at Rodney saying, "if you ever laugh at me again, I'll cut you." As a result, Rodney experienced an immediate heart attack that required hospitalization. Assuming that Rodney was born with a heart defect, could Dodd be at fault for any act of tortuous conduct listed below?
- Yes, for assault.
 - Yes, for intentional infliction of emotional distress.
 - Yes, under the theory of negligence.
 - No.
13. For Christmas, 10-year-old Julie received a toy from her parents called The Water Warhead. The Water Warhead is an ultra-powerful, air-powered water gun. The toy's package contains a giant warning label on the side that reads, *Age 10 and up. Do not aim at eyes, mouth, nose, or ears.* Julie took her new toy to the public pool, and showed it off to her friends. One of her closest buddies, an eight-year-old boy named Chris, said to Julie, "I bet you're too scared to shoot yourself in the mouth with it!" Julie then took the Water Warhead, turned the barrel towards her, and let Chris trigger a blast of water into her face that caused her to faint and sink into the pool. A lifeguard was able to resuscitate Julie, but doctors have confirmed that she will suffer from permanent brain damage.
- Under product liability law, would Julie's parents have a strong case against the manufacturer?
- No, because Julie was clearly misusing the product.
 - Yes, if it can be shown that the toy could have been designed in a safer and more practical manner at a reasonable cost.
 - No, because Julie allowed a boy that was only 8 years old to play with the toy gun.
 - Yes; the facts make clear that the toy has a dangerous manufacturing defect.
14. Barry and Barbara are college students who live on the 12th floor (in different rooms) of a high-rise dorm. Barbara, who is claustrophobic, also has a fear of being

confined in closed spaces. Intending to play a joke on her and scare her, Barry borrowed Barbara's roommate's key and locked Barbara in her room one night at 11 p.m. after she fell asleep. An hour later, Barry suddenly had remorse and returned to Barbara's room and unlocked the door. Barbara never woke up. When another student told her the next morning what had happened, Barbara became agitated and dizzy. She missed all her classes and was prescribed anti-anxiety medicine. She now brings a false imprisonment claim against Barry. Who is likely to prevail?

- a. Barbara, because Barry intended to confine Barbara, and there was no other reasonable means of exit
 - b. Barbara, unless Barry thought she would consent to the joke
 - c. Barry, because he intended only to confine her as a joke for a short time
 - d. Barry, because Barbara was asleep at the time
15. Samantha had just graduated from college and was eager to buy her first car. She finally decided on a brand new Toyonda, but because she was not yet employed full-time, she needed her father to co-sign the loan. So on the night she was buying the car, Father accompanied her to the dealership. Someone had spilled coffee on the middle of the floor of the dealership, which neither Samantha nor Father noticed. While walking to the salesperson's desk, Father slipped in the puddle and landed hard on the tile floor. He suffered a broken collarbone and was forced to miss work for six weeks. Father now sues Dealership for the costs of his injuries and missed work. Dealership moves for summary judgment. What is the likely result?
- a. Father will win, if Dealership did not exercise reasonable care in keeping the premises safe
 - b. Father will win, because he is a business invitee
 - c. Father will lose, because Samantha is the business invitee, not Father
 - d. Father will lose, because the spill was obvious
16. Janice was a single mother with four children ages 15, 8, 6, and 3. She was cooking dinner one evening when she realized she was out of milk, a necessary ingredient for the meal. Rather than gather up her younger children and take them to the store, she gave the keys to her car to her 15-year-old daughter Carla. Carla had a learner's permit to drive and was not eligible for a driver's license until she turned 16, which was in three months. On the way home from the store, Carla hit Dave, a pedestrian who was crossing the street, when she was sending a text message on her cell phone. Dave suffered serious injuries and brought suit against Carla and Janice. Both Carla and Janice moved to dismiss. What is the likely result?
- a. Carla's suit will be heard on the issue of negligence, but Janice's will be dismissed because negligence by a child is not imputed to his/her parent
 - b. Janice's suit will be heard on the issue of her own negligence, but Carla's will be dismissed because she is a minor
 - c. Both suits will be heard
 - d. Both suits will be dismissed

17. Helen was an animal lover who treated her dogs as if they were her children. She worked at home and spent all day long with them. She was happiest when out walking or playing fetch with them. One day, while opening the door to receive a delivery, one of her dogs bolted out of the house to chase a squirrel he saw across the street. As he darted across the street, a car that was traveling 20 miles per hour over the posted speed limit, struck the dog and killed him instantly. Helen saw the whole event and screamed. As a result of watching her beloved companion die, Helen became extremely depressed. She suffered panic attacks, in which she would "see" the event happen over and over again, headaches, and loss of appetite. She was unable to work and suffered financial losses because she was self-employed. Helen now brings suit against the driver for negligent infliction of emotional distress. What is the likely result?
- Helen will prevail because speeding is negligence per se
 - Helen will prevail because for her, her dog holds the same status as a family member would
 - Helen will lose because her dog is property
 - Helen will lose because she was not in the zone of danger
18. Pauline enjoys cooking on her new Danish brand stove. When she gets the stove, she is so excited about how it works that she walks into the other room to call her mother. While she is gone, her three-year-old daughter, Veronica, pulled a chair up to the stove and climbed onto the top. On her way up, her foot hit the knob for the left rear burner, switching it to high. Veronica's shirt caught fire. The t-shirt melted into Veronica's skin. Veronica suffered serious burns on her face, shoulders, and chest. Pauline sues Day-Glo Fabrics, the company that designed the t-shirt. Which of the following statements is most likely correct?
- Day-Glo will prevail, if a safer design was available.
 - Pauline will prevail, because a manufacturer is strictly liable for harm caused by its product.
 - Day-Glo will prevail, unless the t-shirt is supposed to protect the wearer from burns.
 - Pauline will prevail, because it is not unforeseeable that clothing will catch fire.
19. Penny worked behind the counter of a small but popular deli in a large shopping center. The deli was owned by Danny. Early one morning, as she was preparing to open the store, she was attacked by an armed man who raped her. Penny is aware that Danny had previously considered, and rejected, the idea of having uniformed security guards patrol the premises on foot. She sued, on the basis that Danny had a duty to protect her. Danny filed a motion to dismiss, arguing that no such duty existed. Which of the following statements is most accurate?
- The motion will be denied, because it is up to the jury to determine whether there was duty.
 - The motion will be granted, because the owner of a store in a shopping center has no duty to provide security guards to roam the premises.
 - The motion will be denied, if the shopping center is in a low-crime area.

- d. The motion will be granted, because there is no duty to protect a person from the criminal acts of a third party.
20. Michael and Carolyn were involved in a car accident in which it was ruled that Michael was 60% at fault and Carolyn was 40% at fault. Michael sued Carolyn for his injuries. Damages were assessed in the amount of \$10,000. What amount can Michael receive?
- a. Nothing, in a pure comparative negligence jurisdiction
b. \$4,000, in a pure comparative jurisdiction
c. \$4,000, in a modified comparative negligence jurisdiction
d. \$4,000, in a slight/gross comparative negligence jurisdiction

II. Short Answer Questions (Answer only 3 of 5); 30 points total

1. Beebe is a college graduate with a degree in economics. She is also a mother of three. She worked as an administrative assistant at a college until her first child was born. Now, she has three children and does not work outside the home. She is injured in an auto accident and permanently disabled. If she sues the other driver, should she recover for lost earning capacity?
2. Audubon, a 42-year-old naturalist, is seriously injured in an accident involving his car and Darwin's. The evidence at trial indicates that Audubon is totally disabled. Due to his injury, his life expectancy has been shortened from 31 years to 20 years, and his work life expectancy from 25 years to zero. Stated another way, before the accident Audubon could have expected, based on statistical tables, to live to the age of 73, and work to the age of 67. However, due to his injuries he will now likely live only to the age of 62, and will not return to work. The evidence also indicates that he will continue to endure pain, embarrassment, and other psychic injuries from the accident until his death.
- (A) If Darwin is found liable, for what time period should the jury assess damages for Audubon's lost earning capacity?
(B) For what period should the jury award damages for loss of enjoyment of life?
3. Two farmers negligently start fires on a windy day, to burn brush off of their fields. Both fires escape, Farmer Jones's fire a bit ahead of Farmer Smith's. Jones's fire burns toward Menlove's barn, which burns to the ground. Just after it burns, Smith's fire arrives.
- (A) Who is liable under the "but for" test? Explain.
(B) Who is liable under the substantial factor test? Explain.
(C) Applying a little common sense, who *should* be liable to Menlove? Explain.
(D) Can you think of a clever argument to limit Jones's liability? Explain.
4. In *Johnson v. Kosmos Portland Cement Co.*, 64 F.2d 193 (6th Cir. 1933), workers were working inside the hold of a barge, evidently installing a boiler. The barge was used for the transport of oil, and was full of gases generated by the

oil, which should have been cleared out before the workers began their work. As luck would have it, the barge was struck by lightning, which caused the gases to explode, killing the workers.

- (A) Is this case like the rat case, a foreseeable kind of harm that happens in a quirky manner, or is it like the vat case, in which the injury results from an unforeseeable mechanism of harm?
 - (B) Reconsider *In re Polemis*, in which the ship's hold was full of fumes, and they were ignited by a board that fell into the hold. The court applied a "direct cause" test in *Polemis*, but if it had applied a foreseeability/scope-of-the-risk test would apparently have held that this accident was unforeseeable. In light of the *Johnson* case, what argument might you make on behalf of the plaintiff in *Polemis*, if the foreseeability/scope-of-the-risk test were used?
5. Consider, in each of the cases below, whether the actor would be liable for trespass to chattels, conversion, both, or neither. Provide no more than two sentences of explanation for each.
- (A) Pluto, having a grudge against Plaintiff, shoots her horse Flora.
 - (B) Pluto slashes the front tires on plaintiff's car.
 - (C) Pluto rents a car, misses a turn, and hits a tree, causing damage to the fender.
 - (D) Pluto, a medical researcher jealous of a colleague, contaminates her cell cultures, ruining her experiment.
 - (E) Pluto borrows Plaintiff's horse Flora for a ride, with Plaintiff's permission. Flora steps in a rabbit hole and is permanently lamed.
 - (F) Pluto sneaks over and takes Flora, while Plaintiff is away, to ride into town. On the way Flora nibbles a poisonous bush and is sick for three hours.
 - (G) Pluto performs a risky surgery on Secretarius, Plaintiff's race horse. The surgery is not successful, leaving the horse unable to race.
 - (H) Pluto, a rival of plaintiff in an auto-racing event, dumps a truckload of dirt at the end of his driveway. Plaintiff cannot get his car out in time to compete in the race.
 - (I) Muir, an environmental activist, chains himself to a giant logging machine owned by Monumental Paper Company, to prevent the company from logging old-growth forest in a national park. Work is stopped for a day while the police dispose of Muir.
 - (J) Zenger, a reporter, is waiting to interview Carnegie, a corporate executive accused of wrongdoing. He notices that Carnegie has left his papers out on a desk in his office, while conferring with his lawyers in a nearby conference room. Zenger slips into the office and takes photos of Carnegie's papers with his cell phone. He later publishes a story based on the documents.

III. Essay Questions (Answer only 1 of 2); 40 points total

1. Captain Presley was at the helm of “The Ol’ Salt”, an old oil and fuel tanker headed for the Port of Cape Fear. He personally navigated the vessel toward the Cape Fear Bridge. The vessel needed to travel under the Cape Fear Bridge to reach the main port. No one knows what happened next, but somehow the vessel ended up running into the concrete pillars of the Cape Fear Bridge that was owned by the Province. The collision caused serious damage to the pillars (and the vessel). It was later learned that Presley’s Captain’s license had been suspended for failure to pay the annual registration fee as required by federal law. It was also later learned that the manufacturer of “The Ol’ Salt” (Springfield Shipbuilding) may have known that the steering mechanism on at least that vessel (and possibly others of the same class) had a flaw that could cause sudden, unexpected and unexplained lurching of the vessel to starboard. Springfield Shipbuilding later got out of the shipbuilding business.

As a further result of the collision, tons of flammable fuel spilled from the vessel into the waters, polluting the water. Everyone was afraid of the terrible pollution that would result and of a possible fire.

Barney was driving in his fancy convertible car on the top deck of the Cape Fear Bridge shortly after the vessel collision with the bridge (he unaware of any problem). Barney was smoking a big fat cigar while driving. Taking his last puff, he threw the cigar butt over the side of the bridge to the water below, convinced that it would be extinguished in the bay. It was a violation of the state littering laws to throw anything from your car. The cigar hit the fuel in the water and sparked a huge fire that ended up burning down the entire bridge.

- (A) The Province sues Presley for the loss of the bridge. What result and why?
- (B) The Province sues Barney for the loss of the bridge. What result and why?
- (C) The Province also sues Springfield Shipbuilding for the loss of the bridge. What result and why?

2. Inspired by the success of similar events in other cities, the City of Springfield decides to stage a 10-kilometer running road race, to be known as the Springfield Classic. It places advertisements in newspapers throughout the region, distributes pamphlets containing application forms, and sets up an Internet Web site with information about the race and downloadable application forms. All application forms contain the following words printed in fine print across the bottom of the form, above the place where the participant is required to sign:

RELEASE FORM: I know that participating in a road race is a potentially hazardous activity. I should not enter and participate unless I am medically able and properly trained. I assume all risks associated with participation in this event including, but not limited to: falls, contact with other participants, the effects of the weather, including high heat

and/or humidity, traffic, and the conditions of the road, all such risks being known and appreciated by me, including the requirement of wearing protective equipment. I hereby assume full responsibility for and risk of bodily injury, death or property damage due to negligence of the City of Springfield or any of its employees while competing in, officiating in, working for, or for any purpose participating in, the event.

Paula is a keen 10K runner. She enters the race hoping to improve her already-impressive personal best time. She is disappointed when the day of the race turns out to be very hot and highly humid: These are not the conditions for a personal best time. Nevertheless, she runs the race fast and hard, determined to record as fast a time as she can.

There are no drink stations along the course. The City of Springfield Recreation Department (which is responsible for organizing the Classic) originally planned to set up drink stations at every mile marker along the course, dispensing water and electrolyte drinks. It abandoned the plan to cut costs and also because it was unable to recruit a sufficient number of volunteers to staff the drink stations.

Paula has run many 10K races but has never run in one in which there were no drink stations along the course. She continues to run at full race pace, expecting to see a drink station at some point. By the time she reaches the finish line, she is dangerously dehydrated. She collapses and is rushed to hospital. She suffers kidney failure as a result of a previously undiagnosed weakness in her kidneys.

Jared is a much slower runner than Paula. He has never run a 10K race before, but he enters the Springfield Classic as part of his remarkably successful weight loss program. His only goal is to finish the course. He trots along at a gentle pace, stopping to walk every now and again. He drops far behind the other runners and moves along slowly in last place.

The course of the Springfield Classic crosses two main roads as it winds through a large public park. The City of Springfield Recreation Department hires Springfield City Police officers to stop the traffic as the runners cross the road. By the time Jared reaches the first road, the police officers have left, thinking that all runners have passed by. As Jared approaches the road, he sees bright orange cones positioned at either side of the road and in the middle of it, marking the point where the course of the race crosses the road. Without breaking stride, he trots between the orange cones and out onto the road, where he is immediately run down by a speeding car, suffering severe injuries.

Paula and Jared have sued the City of Springfield, claiming that it is responsible for the injuries they suffered. Advise the City of Springfield, and be sure to present all parties' arguments.

HAPPY SUMMER!!!

