

Professor Pope TORTS Fall 2010

- Exam
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- Model answers (posted separately)

WIDENER UNIVERSITY SCHOOL OF LAW

TORTS

FINAL EXAM

Professor Pope

Fall 2010

GENERAL INSTRUCTIONS:

1. **Read Instructions:** You may read these instructions (the first three pages of this exam packet) *before* the official time begins.
2. **Honor Code:** While you are taking this exam, you may not discuss it with anyone.
3. **Competence:** Accepting this examination is a certification that you are capable of completing the examination. Once you have accepted the examination, you will be held responsible for completing the examination.
4. **Exam Packet:** This exam consists of **twenty-two (22) pages**, including this cover page. Please make sure that your exam is complete.
5. **Identification:** Write your exam number in four places: (1) Write it in the space provided in the upper-right hand corner of this page. (2) Write your exam number on the cover of each Bluebook (or your ExamSoft file) that you use for Part Two. (3) Write your exam number (*and* fill in the corresponding ovals) on the Scantron form. (4) Write your exam number on the upper right hand corner of your envelope.
6. **Anonymity:** The exams are graded anonymously. Do *not* put your name or anything else that may identify you (except for your student number) on the exam.
7. **Timing:** This exam must be completed within four hours.
8. **Scoring:** There are 240 points on the exam, approximately one point per minute.
9. **Open Book:** This is an OPEN book exam. You may use *any* written materials, including, but not limited to: the casebook, other required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines. You may not use a computer other than in its ExamSoft mode.
10. **Format:** The exam consists of two parts which count toward your grade in proportion to the amount of time allocated.

PART ONE comprises 40 multiple choice questions. The first twenty questions are worth two points each, for a *combined* total of 40 points (40 minutes). The second twenty questions are worth three points each, for a *combined* total of 60 points (60 minutes). The total suggested total completion time for all multiple choice questions is **100 minutes**.

PART TWO comprises two essay questions. The first one is worth 90 points (90 minutes). The second one is worth 50 points (50 minutes). The suggested completion time for both essays is **140 minutes**.

- 11 **Grading:** All exams will receive a raw score from zero to 240. The raw score is meaningful only relative to the raw score of other students in the class. The only “real” letter grade is that computed at the end of the course by summing the midterm (80), final (240), and quiz (80) scores. Your raw score will be converted into a scaled score, based on the class curve. For example, if the highest raw score in the class were 310 of 400, then that student would typically receive an “A.” I will post an explanatory memo and a model answer both to TWEN and to the library exam archive a few weeks after the exam.
- 12 **Special Instructions:** Instructions specific to each exam section are printed immediately below.

SPECIAL INSTRUCTIONS FOR PART ONE:

1. **Format:** This Part contains 40 multiple choice questions. The first 20 are worth two points each (40 minutes). The second twenty are worth three points each (60 minutes).
2. **Identification:** Write your Student ID *both* on the first page of this exam booklet. *and* on the Scantron form. Fill in the corresponding ovals.
3. **Fill the Oval on the Scantron:** For each question, *fill in* the oval on the Scantron corresponding to the best answer choice.
4. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why in a separately marked section of your Bluebook or ExamSoft file. Your objection must (i) identify the ambiguity or problem in the question and (ii) reveal what your answer would be for all possible resolutions of the ambiguity. I do *not* expect this to be necessary.

SPECIAL INSTRUCTIONS FOR PART TWO:

1. **Format:** This Part contains two essay questions. The first question is worth 90 points (90 minutes). The second question is worth 50 points (50 minutes).
2. **Governing Law:** Both essays are governed by law in the fictional state of Ridley. Several Ridley statutes were distributed prior to the exam and are reprinted at the end

of this exam packet. Apart from these statutes, courts in the state of Ridley apply generally applicable common law tort doctrines.

3. **Submission:** Write your *essay* answers in your Bluebook examination booklets or ExamSoft file. I *will not* read any material which appears only on scrap paper.
4. **Legibility:** Write legibly. I will do my best to read your handwriting, but must disregard (and not give you points for) writing that is too small to read or otherwise illegible. *I am serious; write neatly.*
5. **Outlining Your Answer:** I strongly encourage you to use one-fourth of the allotted time per question to outline your answers on scrap paper *before* beginning to write in your exam booklet or ExamSoft file. Do this because you will be graded not only on the substance of your answer but also on its clarity and conciseness. In other words, organization, precision, and brevity count. If you run out of insightful things to say about the issues raised by the exam question, stop writing until you think of something. Tedious repetition, regurgitations of law unrelated to the facts, or rambling about irrelevant issues *will* negatively affect your grade.
6. **Answer Format:** This is important. *Use headings and subheadings.* Use short single-idea paragraphs (leaving a blank line between paragraphs).
7. **Answer Content:** Address *all* relevant issues that arise from and are implicated by the fact pattern and that are responsive to the “call” of the question. Do not just summarize all the facts or all the legal principles relevant to an issue. Instead, *apply* the law you see relevant to the facts you see relevant. Take the issues that you identify and organize them into a coherent structure. Then, within that structure, examine issues and argue for a conclusion.
8. **Citing Cases:** You are welcome but *not* required to cite cases. While it is sometimes helpful to the reader and a way to economize on words, do not cite case names as a complete substitute for legal analysis. For example, do *not* write: “Plaintiff should be able to recover under *A v. B.*” Why? What is the rule in that case? What are the facts in the instant case that satisfy that rule?
9. **Cross-Referencing:** You may reference your own previous analysis (*e.g.* B’s battery claim against C is identical to A’s, above, because __.” But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
10. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize any key weaknesses in your position and make the argument on the other side.
11. **Additional Facts:** If you think that an exam question fairly raises an issue but cannot be answered without additional facts, state clearly those facts (reasonably implied by, suggested by, or at least consistent with, the fact pattern) that you believe to be necessary to answer the question.

STOP !

**Do NOT turn this page
until the proctor signals**

PART ONE

40 multiple choice questions

1-20 worth two points each = 40 points (40 minutes)

21-40 worth three points each = 60 points (60 minutes)

1. Which statement(s) is(are) true with regard to defenses against liability claims?
 - I. Under contributory negligence, if you contribute to your injury, you cannot recover damages.
 - II. Under comparative negligence, if you contribute to your injury, you cannot recover damages.
 - A. I only
 - B. II only
 - C. Both I and II
 - D. Neither I nor II

2. Amanda needed surgery on her right knee. When the anesthesia wore off after the operation, she noticed surgical wrapping around both knees. When she asked the nurse why both knees were wrapped, the nurse replied that the surgeon made an incision on her left knee, discovered the mistake, and proceeded with the operation on the right knee. What modification of the law of negligence will Amanda probably be able to invoke to recover damages from the surgeon?
 - A. Contributory negligence
 - B. Negligence *per se*
 - C. *Res ipsa loquitur*
 - D. Comparative negligence

3. All of the following are legal defenses to liability claims EXCEPT:
 - A. Contributory negligence
 - B. Assumption of the risk
 - C. Vicarious liability
 - D. Comparative negligence

4. **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
5. **Bruce was involved in an accident in a state that uses a pure comparative negligence rule. Bruce was found to be 75 percent responsible for the accident. His actual damages were \$20,000. How much will Bruce be able to recover from defendant?**
- A. \$5000
 - B. \$0
 - C. \$15,000
 - D. \$20,000
6. **A state statute requires machinery in industrial plants to include automatic shut-off 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
7. **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

8. **Frank slips and falls in WallMart and is injured. Frank files a suit against WallMart for \$50,000. If Frank is 20 percent at fault and WallMart is 80 percent at fault, under the “50 percent rule” “not-greater-than” comparative negligence principle, Frank would recover:**
- A. \$0
 - B. \$25,000
 - C. \$40,000
 - D. \$50,000
9. **Leo slips and falls in WallMart and is injured. Leo files a suit against WallMart for \$50,000. If Leo is 20 percent at fault and WallMart is 80 percent, under a contributory negligence doctrine, Leo would recover:**
- A. \$0
 - B. \$25,000
 - C. \$40,000
 - D. \$50,000
10. **Diana is a passenger in a car driven by Henri Paul, whose negligence causes an accident, injuring himself. Diana, uninjured and for no particular reason, accompanies Henri to the hospital in a fast ambulance. The ambulance is hit by a car driven by Dodi, injuring Diana. Diana files a suit against Henri, whose best defense is:**
- A. Assumption of risk
 - B. Contributory negligence
 - C. Negligence *per se*
 - D. Superseding cause
11. **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.

12. **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?
13. **The proximate cause requirement for a negligence tort is most likely NOT met where:**
- A. A customer becomes ill from food that is carelessly packed at a processing plant.
 - B. A patient becomes sick from a doctor carelessly prescribing the wrong medicine.
 - C. A customer in a building supply store carelessly drops a small can of paint that breaks open and is ignited from a spark caused when the metal can hits the concrete floor.
 - D. A driver injures a pedestrian when rounding a curve at twice the legal speed limit.
 - E. The victim of an accident was aware, prior to the actual accident, that the accident was likely to occur.
14. **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

15. **In *Palsgraf v. Long Island Railroad Co.*, the court decided that the railroad's conduct was not wrong in relation to Palsgraf but did NOT decide whether the conduct was negligent toward the man with the package (that led to Palsgraf's injury). If the court HAD determined that the railroad employee was negligent with regard to the man with the package, would the railroad have been liable for the injury to Palsgraf?**
- A. Yes, because negligence to one party creates negligence to all other parties injured as a result.
 - B. No, because Palsgraf's injury was still not foreseeable.
 - C. Yes, because of the doctrine of assumption of risk.
 - D. No, because Palsgraf was also negligent.
16. **Milo invites Morton into her apartment. Morton commits trespass to land if he:**
- A. Enters the apartment with fraudulent intent.
 - B. Harms the apartment in any way.
 - C. Makes disparaging remarks about Milo to others.
 - D. Refuses to leave when Milo asks him to go.
17. **Christy, a nurse, hires Adam, an accountant, to handle her accounts. Dissatisfied with Adam's work, Christy sues him, alleging negligence. Adam may successfully defend against the suit by proving that he:**
- A. Did not injure Christy in any way.
 - B. Does not know every principle of accounting.
 - C. Performed as well as an ordinary person could have.
 - D. Performed as well as Christy could have.
18. **Calista was injured when she drove her car through a stop sign and was struck by Harrison's car. Harrison saw Calista and could have stopped. However, he failed to do so since he had the right-of-way. Calista can recover damages from Harrison under which of the following legal doctrines?**
- A. Vicarious liability
 - B. Last clear chance rule
 - C. Contributory negligence
 - D. Assumption of risk doctrine

19. **Paula locks Tony in a ground floor room. Tony sues Paula for false imprisonment. Which of the following is true?**
- A. Paula would escape liability if she let Tony out of the room after one hour.
 - B. According to some courts, Paula would escape liability if Tony slept through the entire period that the door was locked and thus was unaware that he was being detained.
 - C. Even if Tony could easily have escaped through an open window, Paula still is liable.
 - D. Paula would not be liable if Tony could have escaped by traveling two miles through a narrow, filthy, rat- infested sewer line that periodically floods with water.
20. **Smitha goes diving during her Carnival Cruise. Carnival has Smitha sign a waiver form indicating that, if she is injured by a shark, she cannot sue Carnival. Smitha was bitten by a shark during her dive. Smitha sues Carnival. Carnival's best defense is**
- A. Comparative negligence
 - B. Contributory negligence
 - C. Implied assumption of risk
 - D. Express assumption of risk

**** Questions 21-40 are worth three points each = 60 points (60 minutes) ****

21. **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.

22. **Harry knew that the brakes on his car were in poor shape. They had been squeaking for months and over the past few weeks, it had become harder and harder to stop the car. Nevertheless, Harry continued driving. One day, as he was driving with proper attention and within the speed limit down Pennsylvania Avenue, a 6-year old named Truman suddenly jumped out from behind a parked car right in front of Harry's car. Harry jammed on his brakes but was unable to stop in time. As a consequence, Harry ended up running into (and over) Truman, causing him personal injuries. It will be stipulated at trial that Truman jumped out from behind the parked car so suddenly and so close to Harry's car that he would have suffered the same injuries even had Harry's brakes been properly adjusted.**

If Harry is sued in negligence for Truman's injuries, can Truman establish a *prima facie* case?

- A. Yes, because Harry's breach of duty in not keeping his brakes properly serviced was the proximate cause of Truman's injuries.
- B. Yes, because Harry should reasonably have foreseen that he might cause an accident by not being able to stop in time.
- C. No, because Harry's breach of duty in not keeping his brakes properly serviced was not the cause-in-fact of Truman's injuries.
- D. No, because Harry's breach of duty in not keeping his brakes properly serviced was not the proximate cause of Truman's injuries.

23. **Plaintiff, a jockey, was seriously injured in a race when another jockey, Laffit, cut too sharply in front of her without adequate clearance. The two horses collided, causing Plaintiff to fall to the ground, sustaining injury. The State Racetrack Commission ruled that, by cutting in too sharply, Laffit committed a foul in violation of racetrack rules requiring adequate clearance for crossing lanes. Plaintiff has brought an action against Laffit for damages in which one count is based on battery.**

Will Plaintiff prevail on the battery claim?

- A. Yes, if Laffit was reckless in cutting across in front of Plaintiff's horse.
- B. Yes, because the State Racetrack Commission determined that Laffit committed a foul in violation of rules applicable to racing.
- C. No, unless Laffit intended to cause impermissible contact between the two horses or apprehension of such contact by Plaintiff.
- D. No, because Plaintiff assumed the risk of accidental injury inherent in riding as a jockey in a horse race.

24. **Stu got into his car, released the brake, and prior to starting the engine, left it on a slight incline in order to pick up a broken bottle lying in the path of the car. The car started to roll in Stu's direction. Tom, a nearby bystander, noticing that Stu was oblivious to his peril, pushed him out of the path of the approaching car. Tom was then struck by the car and was seriously injured. Stu lost his balance from being pushed by Tom, struck his head on the curbstone, and was injured.**

In the action by Tom against Stu for his injury, Stu's best defense is:

- A. That Stu could not reasonably foresee that the incline was of sufficient angle to cause an un-braked car to roll.
- B. That Tom was not a person within the risk of injury from Stu's act.
- C. That Stu could not reasonably foresee that a slowly rolling automobile would cause serious injury.
- D. That Stu had not created a risk of injury to any third person in front of the automobile and therefore cannot be liable to Tom.

25. **Abbott and Costello were in the habit of playing practical jokes on each other on their respective birthdays. On Abbott's birthday, Costello sent Abbott a cake containing an ingredient that he knew had, in the past, made Abbott very ill. After Abbott had eaten a piece of the cake, he suffered severe stomach pains and had to be taken to the hospital by ambulance. On the way to the hospital, the ambulance driver suffered a heart attack, which caused the ambulance to swerve from the road and hit a tree. As a result of the collision, Abbott suffered a broken leg.**

In a suit by Abbott against Costello to recover damages for Abbott's broken leg, Abbott will:

- A. Prevail, because Costello knew that the cake would be harmful or offensive to Abbott.
- B. Prevail, only if the ambulance driver was negligent.
- C. Not prevail, because Costello could not reasonably be expected to foresee injury to Abbott's leg.
- D. Not prevail, because the ambulance driver's heart attack was a superseding cause of Abbott's broken leg.

26. **An ordinance of the city of Wilmington, DE prohibits parking on pedestrian crosswalks. Justin parked his car on against the curb but on a crosswalk running across Concord Pike in violation of the ordinance. A car driven negligently by Hammond ran into Justin's car while it was parked in the crosswalk, injuring King, a passenger in Hammond's car. King has asserted claims for his injuries both against Hammond for negligent driving and against Justin for parking his car in the crosswalk in violation of the crosswalk ordinance.**

Will King prevail in his suit against Justin?

- A. Yes, because parking in violation of the crosswalk ordinance was negligence *per se*.
 - B. Yes, if King would not have been injured had Justin's car not been parked in the crosswalk.
 - C. No, because Justin's parked car was not an active or efficient cause of King's injury.
 - D. No, if prevention of traffic accidents was not a purpose of the ordinance.
27. **Ernie let his roommate borrow his car for the specific purpose of picking up some cheesesteaks that the roommates ordered for dinner. The roommate drove to the mall where the cheesesteak store was located and parked there. Instead of going directly to the cheesesteak store, the roommate went into a record store, browsed, and purchased a CD. The roommate then went to the cheesesteak store and picked up the order which had been ready for 15 minutes. Just as the roommate left the store to return to Ernie's car, another car struck Ernie's car, causing extensive damage.**

If Ernie sues roommate on a negligence theory, who will prevail?

- A. Ernie, because roommate exceeded the scope of his authority when he went to the record store.
- B. Ernie, because but for the roommate's delay in getting the cheesesteaks, Ernie's car would not have been damaged.
- C. Roommate, because he did not create a foreseeable risk of damage to Ernie's car.
- D. Roommate, because roommate did not have the requisite intent to cause dispossession or damage to the chattel.

28. **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.

29. **Farmer Brown hired Allied Movers to move his collection of antique Amish farming tools to a new farmhouse. The movers, wanting to move everything in a single trip, loaded the open bed truck too high. Several iron rakes and shovels crashed to the ground. However, they were not even scratched or dented.**

If Brown brings a negligence action against the movers, he can recover:

- A. Nominal damages
- B. Punitive damages
- C. Both nominal damages and punitive damages
- D. Neither nominal damages nor punitive damages

30. **Eileen was driving to her University of Maryland law school class in a car that she knew did not have operating headlights. On the way to class, Eileen was rear-ended by another driver who had been driving 25 mph over the posted speed limit. Eileen suffered personal injuries and her car was damaged. Maryland follows traditional contributory negligence rules and makes it a misdemeanor to drive a vehicle that does not have operating headlights.**

If Eileen brings an action against the driver, will she prevail?

- A. Yes, because the misdemeanor statute is intended to protect against cars being driven without headlights.
- B. Yes, because the other driver's violation of the speeding statute constituted negligence *per se*.
- C. No, because Eileen violated the misdemeanor statute.
- D. No, because Eileen has not established that driving 25 mph over the speed limit created an unreasonable risk of injury to others.

31. **A security guard negligently locked a door that Paul intended to use to exit the building, so Paul was forced to use a different exit. As Paul stepped outside onto the sidewalk, a car careened out of control and jumped the curb up onto the sidewalk. The car struck and injured Paul. Paul has sued the security guard for his injuries. At trial, the parties stipulated that the guard was negligent in locking the door. Paul also established that if he had exited from the locked door (as he intended to), he would not have been injured. At the end of Paul's case, the security guard moved for a directed verdict. The court should:**
- A. Grant the motion, because the driver of the car was the actual cause of Paul's injuries.
 - B. Grant the motion, because the car was an unforeseeable intervening force.
 - C. Deny the motion, because the jury could find that but for the guard's negligence, Paul would not have been injured.
 - D. Deny the motion, because the jury could find that the guard's negligence was a foreseeable cause of Paul's injury.

32. **Jimmy worked in Pennsylvania but lived in Maryland. One night, Jimmy missed his ride home, so he walked across the street to HOOTERS to get a drink. He chatted with another customer and discovered that they lived only a few blocks from each other. Customer offered to give Jimmy a ride home. Although he knew that customer was probably too drunk to drive, Jimmy reluctantly agreed. On the way home (while in Maryland), Customer, driving in a dangerous manner, was involved in a collision with another car whose driver was also driving negligently. Jimmy was injured. Maryland retains traditional rules of contributory negligence.**

In an action by Jimmy against Customer, Jimmy should:

- A. Prevail, because Customer drove in a dangerous manner
 - B. Prevail, because Customer's negligence was a proximate cause of Jimmy's injuries.
 - C. Not prevail, because the other driver involved in the collision was negligent.
 - D. Not prevail, because Jimmy knew Customer was drunk.
33. **Hussein brought in his car for scheduled maintenance. The mechanic certified that the car was in perfect working order. Later that day, Hussein was driving over the speed limit when his brakes failed, causing his car to strike a pedestrian. If the pedestrian brings an action against the mechanic, what will be the probable outcome?**
- A. Judgment for mechanic, because Hussein's negligence was an independent, superseding cause
 - B. Judgment for mechanic, because the pedestrian was a bystander
 - C. Judgment for pedestrian, if the mechanic was negligent in inspecting the car

34. **Keanu was jogging along the Brandywine biking/jogging trail. Suddenly, a driver pulled out of an alley perpendicular to the trail and failed to stop at a stop sign. The driver hit Keanu with her car, injuring him. Keanu sued the driver. A Wilmington, DE ordinance provides that drivers must stop at all stop signs perpendicular to the biking/jogging trail.**

On the basis of which standard of care will the driver probably be judged?

- A. That of a reasonable and prudent person under the facts of the situation
 - B. The standard set by the city ordinance
 - C. The doctrine of *res ipsa loquitur*, because it can be presumed that nobody would fail to stop at a stop sign in the absence of negligence
 - D. The standard established by qualified expert witnesses
35. **PNC Bank notified the police that an audit had revealed one of its tellers had been embezzling money. After a bank officer signed a complaint on behalf of the bank, the police obtained a warrant from a magistrate and arrested the teller named in the complaint. The teller protested, asserting that she had stolen nothing. After the teller had been in jail overnight, the bank discovered that the auditor had named the wrong teller and immediately notified the police. The arrested teller was released with apologies. The teller then sued the city and the police department for false imprisonment. Will the teller prevail?**
- A. Yes, because of the teller's protests of innocence
 - B. Yes, because the teller had not actually embezzled from the bank
 - C. No, because the police acted pursuant to a valid warrant
 - D. No, because the police released the teller as soon as they discovered the error
36. **Sarah was driving carefully but with a just-expired vehicle emissions registration, in violation of a state statute. When Sarah stopped at a stop sign, another driver, who was speeding, crashed into her car. Sarah suffered injuries and sued the other driver.**

The fact that Sarah had an expired registration would not affect her claim because:

- A. The defendant's negligence occurred after Sarah's.
- B. The defendant should have known that there are some unregistered vehicles, like Sarah's, on the road.
- C. The prevention of accidents of this sort is not the reason that drivers are required to renew their registration.
- D. There is a greater chance of causing injury when a driver speeds than when a person drives with an expired registration.

37. **Len was a law student who, in October 2010, bought a new \$1200 laptop to prepare his outlines. One day, without permission and even though Len really needed the laptop to study for exams, Len's roommate loaned Len's laptop to her mother. Unfortunately, the mother caused extensive damage to the laptop. The cost to repair was \$500, including the cost of shipping and handling (7-12 business days to/from Dell, Inc.).**

In an action by Len against his roommate:

- A. Len will recover \$1200.
 - B. Len will recover the fair market value of the laptop.
 - C. Len will recover \$500.
 - D. Len will recover nothing, because roommate did not damage the machine and the mother's conduct was not intentional.
38. **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.

39. **A state statute requires that any cab driver who carries passengers for hire must have a commercial driver's license. D was an experienced driver who had a regular license but not a commercial license. P knew that D did not have a commercial license but, not wanting to be late, asked D to drive him to the Eagles game. D, having failed to fill-up before picking up passengers, stopped on the way to buy gas. But while in the gas station parking lot, D's car was struck by a car that some teenagers were illegally drag racing against a motorcycle.**

If P sues D, who will prevail?

- A. D, because P knew he lacked a commercial license and voluntarily assumed the risk of driving with him.
 - B. D, because injuries to P were caused by the negligence of the other driver.
 - C. P, because D violated a statute designed to protect persons without commercial licenses from driving passengers for a fee, and such violation imposes liability *per se*.
 - D. P, because D stopped for gas and but for this mistake P would not have been injured by the other car.
40. **Last month, Ingrid had a swimming pool and a cabana constructed in her spacious backyard. The pool was totally within the confines of Ingrid's property. But the cabana extended a few inches onto the neighbor's property. At the time of construction, nobody knew that the cabana extended onto the neighbor's property: not Ingrid, not the neighbor, not the construction company.**

Does the neighbor have a cause of action for trespass?

- A. Yes, because the cabana extends onto the neighbor's property.
- B. Yes, because the presence of the cabana on the neighbor's land has caused damage to his property.
- C. No, because Ingrid did not actually enter the neighbor's property.
- D. No, because the landowner did not intend to have the cabana encroach on the neighbor's property.

----- END OF PART ONE -----

PART TWO

Two essay questions, worth a combined 140 points (140 minutes)

Essay 1 - 90 points (90 minutes)

Ashton left his home at 5:00 p.m. on Thursday, November 12, 2010, for a doctor's appointment. His appointment was at 5:30 p.m. and it would take him at least 25 minutes to reach his doctor's office. As Ashton pulled into traffic, he noted that the yellow "low oil pressure" light on his dashboard was on. He was concerned, because he had just taken the car in for a routine service and oil change at Mayko the day before. He pulled over to the side of the road, pulled his receipt from the dashboard, and used his cell phone to call Demi, the owner of Mayko. Demi assured Ashton that the light did not really mean that the oil pressure was low because they had just changed it the day before. Instead, Demi said, the light was probably just the result of a failure to reset a switch when they changed the oil or some sort of short in the wiring. Demi advised Ashton to bring the car by at his convenience, and that she would reset or repair the light.

Relieved, Ashton continued down the highway toward his doctor's office. A few minutes later, when Ashton was less than a mile from his doctor's office, he saw smoke coming from the hood of the car. He tried to pull over to the side of the road, but before he could make it, his engine died completely and the volume of smoke became even greater. Ashton dashed from the car, leaving it in the right hand lane of traffic. A small fire erupted from the sides of the hood. Again using his cell phone, Ashton dialed 911 and requested fire department and police assistance.

But before fire or police units arrived, a car driven by Bruce plowed into the back of Ashton's car. Bruce was not injured, but his passenger, Rooke, was thrown from the car and suffered serious injuries. The police determined that although Bruce had been wearing a seatbelt at the time of the collision, Rooke was not wearing a seatbelt. The police also determined that both Bruce and Rooke, who had been drinking together all afternoon, had blood alcohol levels over the legal limit. Bruce claimed that he did not see Ashton's car in time to stop because the 18-wheeler in front of him had obscured his view of what was in the lane ahead. When the truck changed lanes just before reaching Ashton's disabled car, Bruce was suddenly able to see Ashton's car, but not in time to stop. An investigation reveals that Ashton's car stalled because it ran out of oil. Demi had failed to replace the oil pan properly and all the oil in the car had drained out.

Discuss and assess what claims any party with colorable claims might bring and the nature of the defenses, if any, that each defendant might assert. All claims are governed by the law of the state of Ridley (pages 21-22).

Essay 2 - 50 points (50 minutes)

Husband and wife, a happily married couple, share their household chores. Both parties are employed but wife earns more at her high paying job. They use much of wife's income to cover their mortgage and living expenses. Wife was standing on the sidewalk in front of her home when a speeding driver lost control of his car and struck wife. Conscious and in pain after the accident, wife was taken by ambulance to the hospital where she remained until several days later when she died of her injuries.

Husband, standing at the front window of the home, saw the accident occur and went into shock, requiring treatment by a physician. Prior to the accident, husband rarely missed a day of work. After the accident, husband had nightmares and suffered periods of severe depression resulting in his inability to work for several months. Wife had worked for her employer as a highly skilled computer programmer. After wife's death, her employer lost an important longstanding client that wife had been working with on a major project. As a result of the loss of the client, employer's profits for the year decreased by 25%.

Analyze and discuss all colorable claims raised by these facts that can be brought against the driver by the following parties:

- (1) **The husband on his wife's behalf as his wife's personal representative (but not in his own personal capacity)**
- (2) **The wife's employer**

Ridley Stat. 101

- (a) Every action for an injury to the person caused by the wrongful act, neglect or default of any person within this State shall be commenced within two years after the cause of any such action shall have accrued.
- (b) A cause of action does not accrue so long as a party reasonably is unaware either that he has been injured, or that the injury is due to the fault of an identifiable person.

Ridley Stat. 102

Any civil action or proceeding to recover damages brought against any person performing or furnishing the design, planning, supervision or observation of construction, or construction of any improvement to real property must be commenced within 12 years after completion of construction of such improvement.

Ridley Stat. 200

- (a) Contributory negligence shall not bar recovery in an action by any person or his legal representative to recover damages for negligence resulting in death or injury to person or property, if such negligence was not greater than the negligence of the person against whom recovery is sought or was not greater than the combined negligence of the persons against whom recovery is sought.
- (b) Any damages sustained shall be diminished by the percentage sustained of negligence attributable to the person recovering.

Ridley Stat. 300

No recovery of damages based upon a lack of informed consent shall be allowed in any action for medical negligence unless the injured party proved by a preponderance of evidence that the health care provider did not supply information regarding such treatment, procedure or surgery to the extent customarily given to patients by other licensed health care providers in the same or similar field of medicine as the defendant.

Ridley Stat. 400

When a person's death is caused by the wrongful act or omission of any person, a decedent's "personal representative" may maintain an action for the injuries caused to decedent by the wrongful act or omission to the decedent.

Ridley Stat. 500

(a) "Roadway" means that portion of a highway improved, designed, or ordinarily used for vehicular travel, exclusive of the shoulder.

(b) No person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon a roadway, unless so directed by a peace officer.

Ridley Stat. 501

A breach of a duty imposed by statute, ordinance, or administrative rule shall not merely be considered by the trier of fact as evidence of negligence. Instead, any breach of duty as provided by statute, ordinance, or administrative rule shall be considered negligence per se.

Ridley Stat. 502

No vehicle shall be turned so as to proceed of face in the opposite direction upon any curve or upon the approach to, or near the crest of a grade, where the vehicle cannot be seen by the driver of any other vehicle approaching from either direction within five hundred feet.

Ridley Stat. 503

The driver and all passengers of a motor vehicle operated on a street or highway in this State shall wear a properly adjusted and fastened seat belt which meets the applicable federal motor vehicle safety standards.

Ridley Stat. 504

It is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

Ridley Stat. 600

There is established the crime of administration of medication by the owner, operator, or employee of a licensed or statutorily exempt child care facility with the intent to drug the child or alter the child's behavior beyond what is medically prescribed or with the reckless disregard for the health, safety, and welfare of the child.

Ridley Stat. 700

Any person who keeps a cockpit or who in any public place fights cocks shall, on conviction, be fined not less than \$750.00.

----- END OF PART TWO -----

Multiple Choice Questions

NOTE: Most of these problems were adapted from actual or simulated MBE questions.

Question	Correct	Question	Correct	Questions 1-20 worth 2 points each Questions 21-40 worth 3 points each	Question	Correct	Question	Correct
1	A	11	B		21	D	31	B
2	C	12	D		22	C	32	D
3	C	13	E		23	C	33	C
4	A	14	A		24	A	34	B
5	A	15	B		25	A	35	C
6	B	16	D		26	B	36	C
7	D	17	A		27	C	37	B
8	C	18	B		28	B	38	A
9	A	19	B		29	D	39	B
10	A	20	D		30	B	40	A
TOTAL				(Mean score =)	(High score =)	100		

Short Essay Question

NOTE: This problem was adapted from an essay question on the July 2007 Minnesota Bar Exam. The “call” of the question asked you to “analyze and discuss all colorable claims raised by these facts that can be brought against the driver by [the husband and by the employer].”

	Issue	P	E
Husband v. Driver			
Battery	Intent: If Driver was going so fast that it was virtually certain that someone would be hit, then the requisite intent might be established	4	
	Harmful contact: Wife was hit by the car.	2	
Negligence	Duty: Driver had a duty to drive with reasonable care, as the reasonably prudent Driver would drive in that area and under those circumstances.	4	
	Duty (negligence per se): Driver should comply with the speed limit laws. (1) Speed limits laws were designed to protect pedestrians, and (2) they were designed to protect against collisions.	6	
	Duty (res ipsa): (1) this is the sort of injury (collision on a sidewalk) that does not happen unless there was negligence, (2) the Driver was in control of the car.	4	
	Breach: Driver did not drive reasonably, and did not comply with speed limit laws.	4	
	Injury: The wife was hit and killed.	2	
	Cause in Fact: Wife would have been in no danger but for Driver’s negligence. She was on the sidewalk. Wife would have suffered no harm if Driver had not hit her.	4	
	Proximate Cause: A car accident, with accident victims is the type of harm contemplated by the statute, and thus, the expected result of the breach. Wife was injured in an accident caused by Driver losing control of his car while speeding. Further, her physical injuries and death are well within the scope of the foreseeable damages of this breach.	4	
Employer v. Driver			
Negligence	Duty, Breach: Same as above	2	
	Injury: Lost income	2	
	Cause in Fact: But for Driver’s negligence Employer would not have lost income.	4	
	Proximate cause: It is unlikely that Employer will have any claims in this case. Employer was not within the scope of risk created by Driver’s negligence, and Employer’s claims are really arising out of contractual relations with wife. Typically, employment is at-will, so Employer could not assume that she would work there forever anyway. Although Employer had a contractual relationship and expectancy based on Wife’s services, Driver owed no duty to Employer, and there is no indication that driver was even aware of whether Wife was employed or not. Thus, Employer will not likely be able to sue for damages on these facts. As a policy matter, this would create too much exposure for ordinary tortfeasors,	8	
Total		50	

Long Essay Question

NOTE: This problem was adapted from an essay question on the February 2005 Georgia Bar Exam. The “call” of the question asked you to “discuss what claims any party with colorable claims might bring and the nature of the defenses, if any, that each defendant might assert.”

	Issue	P	E
Ashton v. Demi			
Duty	Demi had a duty to conduct its repairs of automobiles in accordance with the standard of conduct of a reasonably prudent mechanic. But Demi failed to replace the oil pan properly. This is probably within the ken of the jury but could also be shown through custom.	2	
	Demi had a duty not to tell Ashton that he could continue to drive the car when that was not true.	1	
Breach	Demi failed to do either of the above.	1	
Injury	There was (1) an engine fire and (2) a collision.	1	
Cause in Fact	But for Demi’s negligence, Ashton’s car would not have stalled in the middle of the road, and Bruce would not have hit it.	1	
	The collision would not have occurred without Bruce’s negligence. But that is a concurrent insufficient cause and Demi’ negligence is still a substantial factor. (Could be analyzed as possible superceding.)	1	
Proximate Cause	It is foreseeable that a car running out of oil would stall and could stall in the middle of the road and catch fire. It is also foreseeable that a stalled car might get hit.	2	
Assumption of risk Comparative negl.	Ashton continued to drive after the warning light went on. But Demi assured him that it was safe to do.	2	
Comparative negl.	Negligence per se: Ashton left his car on the roadway. R.S. 500 was designed to protect (1) other drivers and (2) against collisions like this. But given the fire, compliance with the statute was excused. Ashton “tried to pull over” but his engine “died completely.”	2	
Ashton v. Mayko			
Vicarious Liability	The liability of Demi is established above. Mayko is liable for that negligence, because (1) Demi was an employee of Mayko and	1	
	(2) Demi repaired Ashton’s car in the scope of employment.	1	
Ashton v. Bruce			
Duty	Bruce should drive as the reasonably prudent person: not drive too close to the truck, not drive drunk.	1	
	Negligence per se: Bruce had a duty not to drive drunk. R.S. 504 was intended to protect other drivers like Ashton from collisions like this one.	2	
Breach	Bruce was driving drunk (“blood alcohol level over the legal limit”) and following too closely.	1	
Injury	There was a collision.	1	
Cause in Fact	But for Bruce’s negligence he could have avoided Ashton’s car.	1	
	The collision would not have occurred without Demi’s negligence. But that is a concurrent insufficient cause and Bruce’s negligence is still a substantial factor.	1	
Proximate Cause	It is foreseeable that driving drunk and tailgating will result in a collision.	2	
	Bruce could argue that the truck driver was a superseding force. Had the truck driver not changed lanes at the last minute, Bruce have been able to stop. But such a thing was foreseeable.	1	
Assumption of risk Comparative negl.	Same as A v D	2	
Comparative negl.	Same as A v D	2	

Bruce v. Demi			
Duty	Same as A v D	2	
Breach	Same as A v D	1	
Injury	Bruce’s car collided with Ashton’s car.	1	
Cause in Fact	But for Demi’s negligence, Ashton’s car would not have been in the roadway, and Bruce would not have collided with it.	2	
Proximate Cause	Same as A v D	2	
Comparative negl.	Bruce was driving too closely and driving drunk (see A v B).	2	
Bruce v. Mayko			
Vicarious Liability	Same as A v M	2	
Bruce v. Ashton			
Duty	The reasonable person would not continue to drive with her oil light on.	1	
	Negligence per se: Bruce can borrow the statute that says that a motorist cannot leave his car on the roadway (see A v D).	2	

Breach	Ashton was reasonable because he pulled over and telephoned his mechanic.	1	
	Borrowing will not succeed as here, where compliance was impossible.	1	
Injury	Bruce's car collided with Ashton's car.	1	
Cause in Fact	But for Ashton continuing to drive or leaving his car in the road, Bruce would not have collided.	1	
Proximate Cause	It is foreseeable that leaving a car in the road can cause a collision. It was not foreseeable that continuing to drive with the oil light on would cause an accident, since Ashton was reassured by Demi.	2	
Comparative negl.	Same as B v D	2	

Rooke v. Ashton			
Duty	Same as B v A	1	
Breach	Same as B v A	1	
Injury	Rooke was "thrown from the car" and "suffered serious injuries."	1	
Cause in fact	Same as B v A	1	
Proximate cause	Same as B v A (Bruce was not superseding because he was foreseeable.)	2	
Assumption of risk	Rooke got into the car with the drunk Bruce.	2	
Comparative negl.	Negligence per se: Brooke failed to wear her seatbelt. R.S. 503 required this to protect people like Rooke against harm like this. But for this negligence Brooke would not have been injured.	2	

Rooke v. Demi			
Duty	Same as A v D or B v D	1	
Breach	Same as A v D or B v D	1	
Injury	Same as R v A	1	
Cause in fact	Had Demi properly repaired the car, Ashton would not have broken down in the road, Bruce would not have plowed into her, and Rooke would not have been injured.	1	
Proximate cause	Demi reasonably could have foreseen that if it improperly fixed a customer's car or gave that customer bad advice, that customer might get hit and injure another driver or passenger.	2	
	Intervening events make the link between Demi's negligence and Rooke's injuries too attenuated. Demi might argue that Ashton's decision to keep driving was the proximate cause. However, Demi surely could have foreseen that when she advised Ashton not to worry, he would keep driving,	--	--
	Demi might argue that Bruce's drunk driving was the proximate cause of Rooke's damages and broke the chain of causation. However, because it is foreseeable to a mechanic that if he improperly repairs a car it might stall and be rear-ended by a drunk driver, this argument by Demi likely will not succeed.	2	
Assumption of risk	Same as R v A	2	
Comparative negl.	Same as R v A	2	

Rooke v. Mayko			
Vicarious Liability	Same as A v M	2	

Rooke v. Bruce			
Duty	Same as A v B	1	
Breach	Same as A v B	1	
Injury	Rooke was thrown from the car.	1	
Cause in Fact	Same as A v B	1	
Proximate Cause	It is foreseeable that driving drunk will result in a collision.	2	
	Bruce could argue that the truck driver was a superseding force. Had the truck driver not changed lanes at the last minute, Bruce have been able to stop.	1	
Assumption of risk	Same as R v A	2	
Comparative negl.	Same as R v A	2	

Global organization		3	
Total		90	

Total _____ of 240

1-20 (40)	21-40 (60)	Essay (50)	Essay (90)	Midterm (80)	Quizzes (80)	Total (400)	G	GPA
36	48	39	78	79	80	360	A+	4
36	45	40	81	62	74	338	A	4
36	39	39	52	76	76	318	A-	3.7
34	39	34	66	64	76	313	A-	3.7
36	45	36	67	59	68	311	A-	3.7
36	39	28	70	54	78	305	B+	3.3
38	42	33	60	57	74	304	B+	3.3
36	42	37	51	68	68	302	B+	3.3
38	45	34	47	58	78	300	B+	3.3
36	36	39	58	53	78	300	A-	3.7
34	39	42	45	63	72	295	B+	3.3
36	48	38	44	51	74	291	B+	3.3
34	39	24	60	55	74	286	B+	3.3
34	42	37	39	55	76	283	A-	3.7
38	36	40	39	55	74	282	B+	3.3
36	48	27	41	60	70	282	B	3
38	45	38	32	55	74	282	B	3
34	39	28	55	60	64	280	B	3
38	39	21	44	66	72	280	B	3
36	42	35	43	53	70	279	B	3
28	45	26	61	47	70	277	B	3
34	39	27	45	62	68	275	B-	2.7
38	45	29	41	55	66	274	B-	2.7
32	45	28	40	56	72	273	B-	2.7
36	42	20	43	65	66	272	B-	2.7
36	33	23	52	63	64	271	B	3
36	39	31	36	56	72	270	B-	2.7
36	36	29	47	52	70	270	B-	2.7
32	33	26	41	57	80	269	B-	2.7
36	39	26	53	41	74	269	B-	2.7
32	36	35	49	38	78	268	B-	2.7
38	39	24	50	40	76	267	B-	2.7
34	42	28	49	50	64	267	B-	2.7
32	33	37	54	45	66	267	B-	2.7
30	36	32	36	59	74	267	B-	2.7
34	33	44	38	49	68	266	B-	2.7
34	42	27	50	42	70	265	B	3
32	42	29	29	57	74	263	B	3
38	33	31	41	57	62	262	B-	2.7
38	45	18	41	52	68	262	B	3
32	36	27	51	45	70	261	B-	2.7
38	39	36	34	40	74	261	B-	2.7
34	36	33	28	54	74	259	C+	2.3

34	36	36	21	60	70	257	C+	2.3
34	42	35	33	52	58	254	C+	2.3
34	48	21	36	47	64	250	C	2
32	33	32	22	59	72	250	C	2
36	30	32	26	61	64	249	C	2
34	39	21	51	40	60	245	C-	1.7
36	30	32	23	55	64	240	D+	1.3
34	39	33	27	43	64	240	D+	1.3
32	45	23	21	40	68	229	D+	1.3
36	27	27	26	57	50	223	D+	1.3
34	33	21	19	39	66	212	D	1
32	33	22	31	46	40	204	D	1
30	24	26	16	33	66	195	D	1

Required range = 2.3 – 2.75

Actual range = 2.707