

<b>Instructor</b>	<b>Professor Thaddeus Mason Pope</b>
<b>Course Title</b>	<b>Health Law: Quality &amp; Liability</b>
<b>Format</b>	<b>Take Home Midterm Exam</b>
<b>Total Time for Exam</b>	<b>6 hours</b>
<b>Total Number of Pages</b>	<b>7 pages</b>

### Reference Materials Allowed

Open Book (all reference materials allowed)

### Take-Home Exam Instructions

1. Please know your **correct Fall 2016 exam number** and include this number at the top of each page of your exam answer (for example, in a header).
2. Confirm that you are using and have typed the **correct exam number** on your exam document.
3. You may download the exam from the course TWEN site any time after 12:01 a.m. on Wednesday, October 5, 2016. All exam answers must be submitted within 6 hours of download. But, in any case, all exam answers must be submitted by the end of the midterm exam period, i.e. by 11:59 p.m. on Monday, October 10, 2015. Therefore, you will want to download your exam no later than 5:59 p.m. on October 10, to ensure that you have the full allowed 6 hours to complete your exam.
4. Write your answers to all parts of the exam in a word processor. Save your document as a **single PDF file** before uploading to TWEN. Use your exam number as the name for the PDF file.

### Instructions Specific to This Examination

#### GENERAL INSTRUCTIONS:

1. **Honor Code:** While you are taking this exam, you are subject to the Mitchell Hamline Code of Conduct. You may not discuss it with anyone until after the end of the entire exam period. It is a violation of the Code to share the exam questions. Shred or delete the exam questions immediately upon completion of the exam. They will be reposted after the end of the exam period.
2. **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.

3. **Exam Packet:** This exam consists of **7 pages**, including this cover page. Please make sure that your exam is complete.
4. **Identification:** Write your exam number on the top of each page of your exam answer.
5. **Anonymity:** The exams are graded anonymously. Do not put your name or anything else that may identify you (except for your exam number) on the exam. **Failure to include your correct exam number will result in a 10-point deduction.**
6. **Total Time:** Your completed exam is due within 6 hours of downloading it. If your exam is uploaded more than 6 hours after downloading the exam, your exam grade will be **lowered by one point** for every minute in excess of the 6 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 6-hour limit by more than 15 minutes, the situation may be referred for a Code of Conduct investigation and potential discipline. Please save sufficient time to successfully upload your exam.
7. **Timing:** The exam has been written as a 90-minute exam. A student could write basically complete answers to all the questions in 90 minutes. But since this is a take-home exam, you will want to take some extra time (perhaps one-half hour) to outline your answers and consult your course materials. You will also want to take some extra time (perhaps one-half hour) to revise and polish your answers, such that you will not be submitting a “first draft.” In short, while this is a 6-hour take home, you really need not spend more than around 2½ hours on this exam.
8. **Scoring:** There are 75 total points on the exam. The final exam comprises 25% of your overall course grade, 75 of the 300 total course points.
9. **Open Book:** This is an OPEN book exam. You may use any written materials, including, but not limited to: any required and recommended materials, any handouts from class, PowerPoint slides, class notes, and your own personal or group outlines.
10. **Additional Research:** While you may use any materials that you have collected for this class, you are neither expected **nor are you permitted** to do any online or library research (e.g. on Lexis, Westlaw, Google, reference materials) to answer the exam questions.
11. **Format:** The exam consists of two parts:
  - PART ONE** comprises four short answer questions.  
These are worth 10 points each, for a combined total of 40 points.
  - PART TWO** comprises one long answer question.  
It is worth 35 points.

I usually also include 15 to 30 multiple choice questions on the midterm exam, but will save those for the cumulative final exam.

12. **Grading:** All exams will receive a raw score from zero to 75. The raw score is meaningful only relative to the raw score of other students in the class. Your course letter grade is computed by summing the midterm, final, and quiz scores. I will post an explanatory memo and a model answer to TWEN a few weeks after the exam.

**SPECIAL INSTRUCTIONS FOR PARTS ONE AND TWO:**

1. **Submission:** In your exam document create clearly marked separate sections for each of the five problems. You do not need to “complete” the exam in order. But your exam answer document must be structured in order:
  - Short Answer 1
  - Short Answer 2
  - Short Answer 3
  - Short Answer 4
  - Long Answer
2. **Outlining Your Answer:** I strongly encourage you to use at least one-fourth of the allotted time per question to outline your answers on scrap paper before beginning to write. 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.
3. **Answer Format:** This is very important. **Use headings and subheadings.** Use short single-idea paragraphs (leaving a blank line between paragraphs). Do not completely fill the page with text. Leave white space between sections and paragraphs.
4. **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.
5. **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?

6. **Cross-Referencing:** You may reference your own previous analysis (e.g. B's claim against C is identical to A's claim against C, because \_\_.") But be very clear and precise what you are referencing. As in contract interpretation, ambiguity is construed against the drafter.
7. **Balanced Argument:** Facts rarely perfectly fit rules of law. So, recognize the key weaknesses in your position and make the argument on the other side.
8. **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. Do not invent facts out of whole cloth.

### Exam Misconduct

The Code of Conduct prohibits dishonest acts in an examination setting. Unless specifically permitted by the exam or proctor, prohibited conduct includes:

- Discussing the exam with another student
- Giving, receiving, or soliciting aid
- Referencing unauthorized materials
- Reading the questions before the examination starts
- Exceeding the examination time limit
- Ignoring proctor instructions

## Short Answer Questions

- 4 Questions worth 10 points each = 40 total points.
  - Please limit each response to 500 words.
1. Trixie had been treated by Dr. Lie for more than two decades. She first saw him for an irregular heartbeat when she was 28. For years, she took the medications that he prescribed and made the co-pays to Walgreens. When Dr. Lie said that she needed open-heart surgery in 2012, she scheduled it immediately. When he subsequently inserted mesh stents three times to remove blockages from her arteries, she never questioned the procedures. Most recently, Dr. Lie recommended implanting a pacemaker. Trixie has now learned from another physician that these were all needless procedures. Because Trixie is a Medicare beneficiary, the government is pursuing federal fraud claims against Dr. Lie, alleging that cardiology is a big moneymaker. Because healthcare is a fee-for-service system, that creates misaligned incentives to do more procedures than clinically indicated or necessary. **Assess Trixie's informed consent claim against Dr. Lie in Minnesota.**
  2. Christy was pregnant and arrived at the hospital with contractions. She was examined and the pregnancy was monitored according to hospital policies and procedures. But after she had been there for more than five hours, clinicians determined that her labor was proceeding too, too slowly, such that they did not expect delivery of the baby any time soon. So, they sent Christy home. **Is this an EMTALA violation? Explain.**
  3. Brendan arrived at the ED after accidentally cutting off his thumb while doing some *Ask This Old House* home improvements. He was triaged and scheduled to be examined according to the hospital's standard protocols. During this time, Brendan asked, "Will I have to pay for this? I do not have health insurance" The ED charge nurse responded, "Yes, it will be about \$5000. But you can go to the community clinic eight blocks down Snelling for free." Brendan left the ED for the clinic. **Is this an EMTALA violation? Explain.**
  4. Donald arrived at the Trump Hospital ED with an eye injury. The ED physician wanted to conduct a more thorough examination than ED resources allowed. But instead of admitting him or transferring with certification, the ED physician sent Donald, with a nurse escort, for further examination by the Trump Hospital eye department in another building across the street, one block north. **Is this an EMTALA violation? Explain.**

## Long Answer Question

- 1 Question worth 35 points.
- Please limit your response to 2000 words.

Jack is a 4-year-old boy with a known peanut allergy. On September 15, 2016, Jack's parents took him to the nearby, but small, Maplewood Community Hospital emergency department for evaluation of a suspected allergic reaction. Jack's parents reported that he developed facial swelling, tongue swelling, and a diffuse red rash over his entire body immediately after eating what was "labeled" as an almond butter cookie. Before arriving at the ED, Jack's mother administered oral diphenhydramine at the onset of his symptoms, without any apparent improvement.

At the Maplewood ED, initial physical examination was significant for diffuse facial edema including the lips, tongue edema, and a diffuse urticarial rash on the chest, back, arms, and legs. Jack was treated with epinephrine intramuscularly, methylprednisolone intravenously, diphenhydramine IV, and ranitidine IV. Rash and tongue edema were unchanged, and facial edema improved.

While Jack was being examined and treated at the ED in the presence of his father, his mother was waiting in the Maplewood Community Hospital cafeteria. During this time, Jack's mother became dizzy and unsteady on her feet. She made her way back to the ED. There, staff noted that she was slurring her speech and exhibiting left facial droop, both signs of a stroke. Triage nurses and physicians performed standard diagnostic tests which included stroke assessments, an electrocardiogram, and a computed tomography (CT) scan. None of these tests indicated evidence of stroke (like intracranial hemorrhage). So, the staff diagnosed her with Bell's palsy, a form of temporary facial paralysis unrelated to stroke. Jack's mother was discharged.

Meanwhile, after her initial exam of Jack the Maplewood ED attending physician telephoned the ED attending physician at Saint Paul Children's Hospital to discuss transfer for specialized pediatric care (unavailable at Maplewood Community Hospital) for a presumed allergic reaction. The Saint Paul Children's Hospital physician agreed to accept the patient transfer request. Maplewood then contacted a private ambulance service for patient transport. Copies of the medical records were made and handed to the ambulance crew at the time of transport. But the private ambulance service then transported Jack to Edina Children's Hospital instead of Saint Paul Children's Hospital.

On arrival at Edina Children's Hospital, Jack was evaluated and noted to have obvious facial edema and a generalized urticarial rash. No intraoral edema or respiratory distress was present at the time of arrival. The medical team at Edina Children's Hospital recommended admission to the hospital for further evaluation, monitoring, and treatment.

After determining that Jack had been transferred from Maplewood Community Hospital, the Edina Children's Hospital ED charge nurse telephoned Maplewood Community Hospital to inquire about the transfer, including why no advance communication about the transport had occurred. The Maplewood Community Hospital charge nurse explained that the transfer had been intended for Saint Paul Children's Hospital. She then alleged that Edina Children's Hospital had committed an EMTALA violation by treating Jack rather than immediately transferring Jack to the intended destination at Saint Paul Children's Hospital.

The Edina Children's Hospital ED attending physician then arranged for Jack's transfer to Saint Paul Children's Hospital. A subsequent review revealed that the private ambulance service had dispatched its personnel with incorrect destination information. But none of the three hospitals filed any formal complaint about each other or about the ambulance company. Jack was soon discharged from Saint Paul Children's Hospital and is now doing fine.

Unfortunately, Jack's mother did not fare as well. She died from a stroke on October 3, 2016. The coroner determined that her right carotid artery must have been so seriously occluded on the date of her visit to Maplewood Community Hospital, that she suffered a first stroke at that time. Therefore, ED clinicians there should have been administered the appropriate therapy (tissue plasminogen activator) to dissolve blood clots.

**Identify and assess all potential EMTALA violations committed by any party.**

# END OF EXAM