

Instructor	Professor Thaddeus Mason Pope
Course Title	Torts: The Common Law Process
Format	Take Home Final Exam
Total Time for Exam	48 hours
Total Number of Pages	22 pages

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 Blackboard site any time after 7:00 p.m. on Friday, December 9, 2016. Your exam answer file must be submitted back to the Blackboard site by 7:00 p.m. on Sunday, December 11, 2016. Therefore, you have “up to” 48 hours to complete the 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 Blackboard.
5. 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. (There may be an accommodation student taking this exam at a different time.) 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 **22 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 48 hours of downloading it. If your exam is uploaded more than 48 hours after downloading the exam, your exam grade will be **lowered by one point** for every minute in excess of the 48 hours. If the timestamp on your uploaded exam indicates that you have exceeded the 48-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. All exam answers must be submitted by 7:00 p.m. on Sunday, December 11, 2016.
7. **Timing:** The exam has been written as a four-hour exam. A student could write basically complete answers to all the questions in four hours. 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 48-hour take home, you really need not spend more than around five (5) hours on this exam.
8. **Scoring:** There are 150 total points on the exam. The final exam comprises 50% of your overall course grade, 150 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 thirty (30) multiple choice questions.
These are worth 2 points each, for a combined total of 60 points.
 - PART TWO** comprises three short answer questions.
These are worth 30 points each, for a combined total of 90 points.
12. **Grading:** All exams will receive a raw score from zero to 150. 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 PART ONE:

1. **Numbered List of Letters:** In your exam document create a vertical numbered list (1 to 30). Next to each number type the letter corresponding to the best answer choice for that problem.
2. **Ambiguity:** If (and only if) you believe the question is ambiguous, such that there is not one obviously best answer, neatly explain why immediately after your answer choice. 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. **Submission:** In your exam document create clearly marked separate sections for each of the three (3) problems. You do not need to “complete” the exam in order. But your exam answer document must be structured in this order:
Short Answer 1
Short Answer 2
Short Answer 3
2. **Statutory Appendix:** Use the statutory appendix when a provision there is relevant to the analysis. The statutes in the Appendix preempt any other law that we may have discussed in the course. On issues not addressed by the statutes, common law rules and principles discussed in the course apply.
3. **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

PART ONE

Multiple Choice Questions

- 30 Questions worth 2 points each
- Worth a combined total of 60 points
- Recommended time = 90 minutes total (3 minutes each)

1. Donald and Melania were both government workers employed in downtown Capitol City. Both Donald and Melania were late for work on Wednesday morning. As such, they each were traveling at an excessive rate of speed toward their respective places of business. Donald was traveling down Rice Street, only seven blocks from his office, at a speed of forty-five miles per hour. The posted speed was thirty miles per hour. As Donald approached the intersection of Rice Street and University Avenue, Melania also approached the same intersection. Melania was traveling East on University Avenue to get to work that morning. Melania was also speeding and witnesses estimated her speed to be somewhere between forty and fifty miles per hour. The posted speed on University Avenue was thirty miles per hour.

The two cars collided at the intersection of Rice and University. Melania's Subaru Legacy hit Donald's Cadillac Escalade causing Donald to swerve out of control into the Salvation Army bell ringer at the corner. The ringer suffered extensive injuries. The jury found that the accident was caused by the inattentiveness of both drivers with Donald 40% negligent and Melania 60% negligent.

If this jurisdiction follows the doctrine of traditional contributory negligence, and Melania suffered \$10,000 in damages, what will Melania recover in a suit against Donald?

- A. \$10,000
 - B. \$6,000
 - C. \$4,000
 - D. Nothing
2. On the same facts as in Question 1: If this jurisdiction follows the doctrine of "pure" comparative negligence, and Melania suffered \$10,000 in damages, WHAT AMOUNT will Melania recover in a suit against Donald?
- A. \$10,000
 - B. \$6,000
 - C. \$4,000
 - D. Nothing

3. Again on the same facts as in Question 1: If this jurisdiction follows the doctrine of "modified" comparative negligence, and Melania suffered \$10,000 in damages, **WHAT AMOUNT** will Melania recover in a suit against Donald?
- A. \$10,000
 - B. \$6,000
 - C. \$4,000
 - D. Nothing
4. Again on the same facts as in Question 1: If this jurisdiction follows the doctrine of "modified" comparative negligence, and Donald suffered \$10,000 in damages, then **WHAT AMOUNT** will Donald recover in a suit against Melania?
- A. \$10,000
 - B. \$6,000
 - C. \$4,000
 - D. Nothing
5. Angelina was married to Brad who was an alcoholic. When drunk, Brad often became violent and physically abused Angelina. As a result, Angelina always lived in fear. One night, Angelina heard Brad on the front porch making loud obscene remarks. Angelina was certain that Brad was drunk and was terrified that she would be physically beaten again. In her fear, Angelina bolted the front door and took out a revolver. When Brad discovered that the door was bolted, he kicked it down. As Brad burst through the front door, Angelina shot him four times in the chest, killing him. In fact, Brad was not under the influence of alcohol or any drug. Nor did he not intend to harm Angelina. At trial, Angelina presented the above facts and asked the judge to instruct the jury on self-defense.

How should the judge **INSTRUCT** the jury with respect to self-defense?

- A. Give the self-defense instruction, because it expresses the defense's theory of the case.
- B. Give the self-defense instruction, because the evidence is sufficient to raise the defense.
- C. Deny the self-defense instruction, because Angelina was not actually in imminent danger from Brad.
- D. Deny the self-defense instruction, because Angelina used excessive force.

6. Children defendants are ALWAYS held to the standard of care as measured by the reasonable child of similar age, experience, and knowledge.

- A. True
- B. False

7. If you are drunk when you injure someone in a bar fight, when suing you for negligence, your victim MUST establish:

- A. That you did not act as the reasonable drunk person would
- B. That you did not act as the reasonable person would
- C. That you did not act as the reasonable person would under the circumstances

8. A Saint Paul, Minnesota ordinance makes it unlawful to park a motor vehicle within 12 feet of a fire hydrant. At 4:50 p.m., Stephanie, realizing that she must be in DMV before it closed at 5:00 p.m., and finding no other space available, parked her car in front of a fire hydrant on a city street. Stephanie then hurried into the DMV, leaving her mom, Bonnett, as a passenger in the rear seat of the car.

About five minutes later, and while Stephanie was still in the DMV, Huttner was driving down the street. Huttner swerved to avoid what he mistakenly thought was a hole in the street and sideswiped Stephanie's car. Stephanie's car was turned over on top of the hydrant, breaking the hydrant and causing a small flood of water. Huttner's car was severely damaged and Huttner was badly injured.

If Huttner asserts a claim against Stephanie, the MOST LIKELY result is that Huttner will:

- A. Recover, because Stephanie's action was negligence per se.
- B. Recover, because Stephanie's action was a continuing wrong which contributed to Ned's injuries.
- C. Not recover, because a reasonably prudent person could not foresee injury to Huttner as a result of Stephanie's action.
- D. Not recover, because a violation of a city ordinance does not give rise to a civil cause of action.

9. Anja suffered a serious injury while participating in an impromptu basketball game at a public park. The injury occurred when Anja and Moon, on opposing teams, each tried to obtain possession of the ball when it rebounded from the backboard after a missed shot at the basket. During that encounter, Anja was struck and injured by Moon's elbow. Anja now seeks compensation from Moon.

At the trial, evidence was introduced tending to prove that the game had been rough from the beginning, that elbows and knees had frequently been used to discourage interference by opposing players, and that Anja had been one of those making liberal use of such tactics.

In this action, will Anja prevail?

- A. Yes, if Moon intended to strike Anja with his elbow.
 - B. Yes, if Moon intended to cause a harmful or offensive contact with Anja.
 - C. No, because Anja impliedly consented to rough play.
 - D. No, unless Moon intentionally use force that exceeded the players' consent.
10. The police in Saint Paul notified local gas station attendants that a woman, known as Robber, recently had committed armed robberies at seven Saint Paul gas stations. The police said that Robber was approximately 50 years old, had white hair, and drove a vintage, cherry-colored Chevy Camaro. Attendants were advised to call police if they saw her, but not to attempt to apprehend her. Armed robbery is a felony under state law.

JoAnn was passing through Saint Paul on a cross- country journey. JoAnn was a 50-year-old woman who had white hair and drove a vintage, cherry-colored Chevy Camaro. When JoAnn drove into Attendant's gas station, Attendant thought JoAnn must be the robber wanted by the police. After checking the oil at JoAnn's request, Attendant falsely informed JoAnn that she had a broken fan belt, that her car could not be driven without a new belt, that it would take him about an hour to replace it, and that she should stay in his office for consultation about the repair.

JoAnn was greatly annoyed that her journey was delayed, but she stayed in Attendant's office while she waited for her car. Meanwhile, Attendant telephoned the police and, about 40 minutes later, the police came and questioned JoAnn. The police immediately determined that JoAnn was not Robber, and JoAnn resumed her journey without further delay.

In JoAnn's action for false imprisonment against Attendant, JoAnn will:

- A. Not prevail, if Attendant reasonably believed that JoAnn was Robber.
- B. Not prevail, because JoAnn suffered no physical or mental harm.
- C. Prevail, if JoAnn reasonably believed she could not leave Attendant's premises.
- D. Prevail, because Attendant lied to JoAnn about the condition of her car.

11. Mom rushed her seven-year-old daughter, Child, to the emergency room at Hospital after Child fell off her bicycle and hit her head on a sharp rock. The wound caused by the fall was extensive and bloody.

Mom was permitted to remain in the treatment room, and held Child's hand while the emergency room physician cleaned and sutured the wound. During the procedure, Mom said that she was feeling faint and stood up to leave the room. While leaving the room, Mom fainted and, in falling, struck her head on a metal fixture that protruded from the emergency room wall. She sustained a serious injury as a consequence.

If Mom sues Hospital to recover damages for her injury, will she prevail?

- A. Yes, because Mom was on Hospital property.
 - B. Yes, unless the fixture was an obvious, commonly used, and essential part of Hospital's equipment.
 - C. No, unless Hospital's personnel failed to take reasonable steps to anticipate and prevent Mom's injury.
 - D. No, because hospital's personnel owed mom no affirmative duty of care.
12. Jeeves, who was driving at an excessive speed, applied his brakes to stop at a traffic light. Due to damp, fallen leaves, Jeeves' car skidded and came to a halt perpendicular to the roadway. Wooster, who was also driving at an excessive speed and was immediately behind Jeeves, saw Jeeves's car perpendicular to the roadway. Although Wooster had sufficient distance to come to a slow, controlled stop, he decided not to slow down but, rather, to swerve to the left in an effort to go around Jeeves's car. Due to oncoming traffic, the space was insufficient and Wooster's car collided with Jeeves's car, severely injuring Jeeves.

Jeeves filed a personal injury action against Wooster in a jurisdiction in which contributory negligence is a bar to recovery. Will Jeeves prevail?

- A. Yes, if the jury finds that Wooster was more than 50% at fault.
- B. Yes, if the jury finds that Wooster had the last clear chance.
- C. No, if the jury finds that Jeeves's conduct was in any way a legal cause of the accident.
- D. No, if the jury finds that, in speeding, Jeeves assumed the risk.

13. While approaching an intersection with the red light against him, Motorist suffered a heart attack that rendered him unconscious. Motorist's car struck Pedestrian, who was crossing the street with the green light in her favor. Under the state motor vehicle code, it is an offense to drive through a red traffic light.

Pedestrian sued Motorist to recover for her injuries. At trial it was stipulated that:

- Immediately prior to suffering the heart attack, Motorist had been driving within the speed limit, had seen the red light, and had begun to slow his car.
- Motorist had no history of heart disease and no warning of this attack.
- While Motorist was unconscious, his car ran the red light.

On cross motions for directed verdicts on the issue of liability at the conclusion of trial testimony, the court should:

- A. Grant Pedestrian's motion, because Motorist ran a red light in violation of the motor vehicle code.
 - B. Grant Pedestrian's motion, because, in the circumstances, reasonable persons would infer that Motorist was negligent.
 - C. Grant Motorist's motion, because he had no history of heart disease or warning of the heart attack.
 - D. Deny both motions and submit the case to the jury, to determine whether, Motorist's conduct was that of a reasonably prudent person.
14. Diner became ill after eating at Pete's Pita. Diner then sued Pete's Pita for damages. He introduced testimony from a health department official that various health code violations had been found at Pete's Pita both before and after Diner's dinner, but that none of Pete's Pita's employees had signs of bacterial infection when they were tested one month after the incident.

Pete's Pita's BEST argument in response to Diner's suit would be:

- A. No one else who ate at Pete's Pita complained about stomach discomfort.
- B. Pete's Pita instructs its employees to wash their hands carefully and is not responsible if any employee fails to follow these instructions.
- C. Diner has failed to establish that Pete's Pita's food caused his illness.
- D. Diner assumed the risk of an upset stomach by choosing to eat spicy food.

15. Jerry's car sustained moderate damage in a collision with a car driven by Kramer. The accident was caused solely by Kramer's negligence. Jerry's car was still drivable after the accident. Examining the car the next morning, Jerry could see that a rear fender had to be replaced. He also noticed that gasoline had dripped onto the garage floor. The collision had caused a small leak in the gasoline tank.

Jerry then took the car to Mechanic, who owns and operates a body shop, and arranged with Mechanic to repair the damage. During their discussion Jerry neglected to mention the gasoline leakage. Later, while Mechanic was loosening some of the damaged material with a hammer, he caused a spark, igniting vapor and gasoline that had leaked from the fuel tank. Mechanic was severely burned.

Mechanic has brought an action to recover damages against Jerry and Kramer. This jurisdiction has adopted a pure comparative negligence rule in place of the traditional common-law rule of contributory negligence.

In this action, will Mechanic obtain a judgment against Kramer?

- A. No, unless there is evidence that Kramer was aware of the gasoline leak.
 - B. No, if Mechanic would not have been harmed had Jerry warned him about the gasoline leak.
 - C. Yes, unless Mechanic was negligent in not discovering the gasoline leak himself.
 - D. Yes, if Mechanic's injury was a consequence of Kramer's negligent driving.
16. On the same facts as Question 15: In this action, will Mechanic obtain a judgment against Jerry?
- A. No, because it was Mechanic's job to inspect the vehicle and repair whatever needed repair.
 - B. No, unless Jerry was aware of the risk that the gasoline leak represented.
 - C. Yes, if a reasonable person in Jerry's position would have warned Mechanic about the gasoline leak.

17. **Minnesota State Prison prohibits the photographing of the face of any prisoner without the prisoner's consent. Photographer, a news photographer, wanted to photograph Notorious TMP, an infamous crime figure incarcerated at Minnesota State Prison. To circumvent the prohibition, Photographer flew over the prison exercise yard and photographed Notorious TMP. Prisoner, who was imprisoned for a technical violation of a regulatory statute, happened to be standing next to Notorious TMP when the photograph was taken.**

When the picture appeared in the press, Prisoner suffered severe emotional distress because he believed that his business associates and friends would think he was consorting with gangsters. Prisoner suffered no physical harm as the result of his emotional distress. Prisoner brought an action against Photographer for intentional or reckless infliction of emotional distress.

What is the BEST argument that Photographer can make in support of a motion for summary judgment?

- A. No reasonable person could conclude that Photographer intended to photograph Prisoner.
 - B. Prisoner did not suffer any physical injury arising from the emotional distress.
 - C. As a news photographer, Photographer was privileged to take photographs that others could not.
 - D. No reasonable person could conclude that photographer's conduct was extreme and outrageous as to Prisoner.
18. **Farmer owns a small farm with several head of cattle, which are kept in a fenced grazing area. One day the cattle were frightened by a thunderstorm, an occasional occurrence in the area. The cattle broke through the fence, entered onto Neighbor's property, and severely damaged Neighbor's crops. Under the law of the state, landowners are not required to erect fences to prevent the intrusion of livestock.**

If Neighbor sues Farmer to recover for the damage done to his crops, will Neighbor prevail?

- A. Yes, if Farmer's cattle had panicked during previous thunderstorms.
- B. No, unless the fence was negligently maintained by Farmer.
- C. No because the thunderstorm was a force of nature.

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

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

In this action, the plaintiff should:

- A. Prevail, if Surgeon was negligent in failing to have Lessandra examined by a cardiologist prior to the operation.
 - B. Prevail, if the blood clot that caused Lessandra's death was caused by the operation which Surgeon performed.
 - C. Not prevail, absent evidence that a cardiologist, had one examined Lessandra before the operation, would probably have provided advice that would have changed the outcome.
 - D. Not prevail, because Surgeon had nothing to do with the withdrawal of artificial life port, which was the cause of Lessandra's death.
20. The day after Seller completed the sale of his house and moved out, one of the slates flew off the roof during a windstorm. The slate struck Pedestrian, who was on the public sidewalk. Pedestrian was seriously injured. The roof is old and has lost several slates in ordinary windstorms on other occasions.

If Pedestrian sues Seller to recover damages for his injuries, will Pedestrian prevail?

- A. Yes, because the roof was defective when Seller sold the house.
- B. Yes, if Seller should have been aware of the condition of the roof and should have realized that it was dangerous to persons outside the premises.
- C. No, because Seller was neither the owner nor the occupier of the house when Pedestrian was injured.
- D. No, if Pedestrian knew that in the past slates had blown off the roof during windstorms.

21. **Passenger departed on a Cunard ocean liner knowing that it would be a rough voyage due to predicted storms. The ocean liner was not equipped with the type of lifeboats required by the applicable statute. Passenger was swept overboard and drowned in a storm so heavy that even a lifeboat that conformed to the statute could not have been launched.**

In an action against Cunard brought by Passenger's representative, will Passenger's representative prevail?

- A. Yes, because the ocean liner was not equipped with the statutorily required lifeboats.
 - B. No, because the storm was so severe that it would have been impossible to launch a statutorily required lifeboat.
 - C. No, because Passenger assumed the risk by boarding the ocean liner knowing that would be a rough voyage.
22. **Driver was driving his car near Miranda's house when Miranda's child darted into the street in front of Driver's car. As Driver swerved and braked his car to avoid hitting the child, the car skidded up into Miranda's driveway and stopped just short of Miranda, who was standing in the driveway and had witnessed the entire incident. Miranda suffered serious emotional distress from witnessing the danger to his child and to himself. Neither Miranda nor his property was physically harmed.**

If Miranda asserts a claim for damages against Driver, will Miranda prevail?

- A. Yes, because Driver's entry onto Miranda's land was unauthorized.
 - B. Yes, because Miranda suffered serious emotional distress by witnessing the danger to his child and to himself.
 - C. No, unless Driver was negligent.
 - D. No unless Miranda's child was exercising reasonable care.
23. **Traveler was a passenger on a commercial aircraft owned and operated by Venezuela Airlines. The aircraft crashed into a mountain, killing everyone on board. The flying weather was good. Traveler's legal representative brought a wrongful death action against Venezuela Airlines. At trial, the legal representative offered no expert or other testimony as to the cause of the crash.**

On Venezuela Airline's motion to dismiss at the conclusion of the legal representative's case, the court should:

- A. Grant the motion, because the legal representative has offered no evidence as to the cause of the crash.
- B. Grant the motion, because the legal representative has failed to offer evidence negating the possibility that the crash may have been caused by mechanical failure that Airline could not have prevented.
- C. Deny the motion, because the jury may infer that the aircraft crashed due to Airline's negligence.

24. **Driver negligently drove his car into Pedestrian, breaking her leg. Pedestrian's leg was put in a cast, and she used crutches to get about. Later, while shopping at Whole Foods Market, Pedestrian non-negligently placed one of her crutches on a banana peel that had been negligently left on the floor by the manager of Whole Foods. Pedestrian's crutch slipped on the peel, and she fell to the floor, breaking her arm. Had Pedestrian stepped on the banana peel at a time when she did not have to use crutches, she would have regained her balance.**

Pedestrian sued Driver and Whole Foods for her injuries. Pedestrian will be able to recover from:

- A. Driver, for her broken leg only.
 - B. Driver, for both of her injuries.
 - C. Market, for both of her injuries.
 - D. Driver for her broken leg only, and Whole Foods, for her broken arm only.
25. **Cameron's sporting goods shop was burglarized by an escaped inmate from a nearby prison. The inmate stole a rifle and bullets from a locked cabinet. The burglar alarm at Cameron's shop did not go off, because Cameron had negligently forgotten to activate the alarm's motion detector. Shortly thereafter, the inmate used the rifle and ammunition stolen from Cameron in a shooting spree that caused injury to several people, including Paula.**

If Paula sues Cameron for the injury she suffered, will Paula prevail?

- A. Yes, if Paula's injury would have been prevented had the motion detector been activated.
 - B. Yes, because Cameron was negligent in failing to activate the motion detector.
 - C. No, unless there is evidence of circumstances suggesting a high risk of theft and criminal use of firearms stocked by Cameron.
26. **Homeowner awoke one night and observed a thief stealing chickens from his backyard chicken coop. While the thief was exiting with a sack of chickens, Homeowner got his hunting rifle and shot him. If the thief sues for battery:**
- A. Thief will probably succeed.
 - B. Homeowner will probably succeed because the shooting was in defense of chattel.
 - C. Homeowner will probably succeed because the shooting was in defense of property.
 - D. Homeowner will probably succeed because the shooting was in self-defense.

27. **A driver of a car negligently hit a truck, causing injuries to his passenger. The passenger was rushed by ambulance to the hospital where he received treatment and surgery. While operating on the injured passenger, the surgeon negligently caused severe internal injuries to the patient.**

Can the passenger collect damages from the driver for injuries resulting from the surgeon's negligence?

- A. Yes, because the malpractice of medical providers is usually considered within the ambit of foreseeable results stemming from an auto accident.
 - B. No, the chain of causation was broken by the malpractice, which was not foreseeable.
 - C. No, a plaintiff can never collect damages caused by an intervening negligent human force.
 - D. Yes, a plaintiff is entitled to all damages that flow after the initial accident occurs.
28. **A driver of a car negligently hit a pedestrian. Pedestrian had an open wound and was rushed to the hospital for a blood transfusion. At the hospital Pedestrian refused the transfusion. She died shortly thereafter. The physician verified that the patient would have fully recovered if she had agreed to treatment.**

What damages can Pedestrian's estate collect from the driver of the car?

- A. All damages for wrongful death because it is foreseeable that this kind of negligence could injure someone who will not accept treatment for religious reasons.
 - B. No damages, because Pedestrian's wrongdoing in not accepting treatment was the sole cause for her death.
 - C. Damages for the wound and the pain and suffering up to the point that Pedestrian refused the transfusion.
 - D. No damages, because Pedestrian's refusal of treatment constitutes contributory negligence.
29. **A Christmas shopper at Target sees that a display case is about to fall on Victim, another shopper's head. The shopper does nothing to warn or assist Victim, who is a stranger to her. She could have taken action to protect Victim without harming herself.**

Did the shopper have a duty to take action to try and protect Victim from injury?

- A. No, there is no duty for a shopper to render assistance to a stranger even if it can be done without hurting herself.
- B. No, a failure to act does not and cannot result in liability under any circumstances.
- C. Yes, the shopper must take action under the "last clear chance" doctrine.

30. A truck driver was making deliveries for Target, his employer. After telling his supervisor by phone that he was going for lunch and getting approval, he pulled into the entrance of a restaurant where he intended to have his usual 45-minute lunch break. While entering the parking lot, the driver carelessly ran over and seriously injured a pedestrian. The injured person sued the driver and Target for negligence in causing her injuries.

Is the employer liable?

- A. Yes, because of the doctrine of vicarious liability.
- B. Yes, because the employer owned the truck.
- C. No, because liability cannot be imputed from one person to another.

PART TWO

Short Answer Questions

- 3 Questions worth 30 points each
- Worth a combined total of 90 total points
- Use the Exam Statutory Appendix when it is relevant.
- Limit each response to 2000 words. This is only a limit, not a target or suggested length.
- Recommended time = 50 minutes each

Short Answer Question 1 of 3

Truog works in an office on the top floor of a six story commercial building, owned by Lantos. Late one evening, after most of the building's other occupants had already gone home for the night, Truog entered the building's elevator, intending to take it to her car in the basement parking garage. Instead, the elevator stalled between the fourth and fifth floors, leaving Truog trapped inside. Truog rang the elevator alarm, but because the building was nearly deserted, no one responded. As a result, Truog was trapped inside the stalled elevator for hours, during which time he grew increasingly panicked.

The next morning, when the building's first workers arrived for the day, Truog was discovered inside the elevator. By this time, Truog had lapsed into unconsciousness. An ambulance was immediately dispatched to take Truog to the hospital.

The ambulance was operated by Veatch, an experienced driver. On route to the hospital, Veatch cut off another driver, later identified as Ross. The two exchanged angry words and hand gestures. Suddenly, Ross pulled out a handgun and fired a shot at Veatch, missing her but striking Truog in the chest. Shaken but unhurt, Veatch continued to the hospital, where Truog was pronounced dead on arrival.

Truog's family retains you to file claims against any and all potential defendants. You launch an investigation, which reveals the following five things:

- The elevator malfunction represented the sixth breakdown during the last 45 days. It is unclear whether Truog was aware of any of the prior breakdowns.
- Lantos had hired an experienced serviceman to perform routine maintenance on the elevator. Had the maintenance been performed properly, the malfunction would not have occurred, and Truog would not have been trapped.
- Although the building was nearly deserted when Truog rang the elevator alarm, the sound was heard by Barb, who was working late that night in another office in the building. Barb reached for the phone to call for help, but then decided that someone else would probably alert the authorities. So, she did nothing.

- Veatch's driver's license expired two months before the incident. She had planned to renew it by paying the required fee, but forgot to do so.
- An autopsy revealed that while Truog died as a result of the gunshot wound, the injuries he sustained in the elevator were potentially life threatening as well.

Prepare a memorandum, discussing both (1) the claims you intend to bring against each potential defendant, and (2) the anticipated defenses that each defendant would likely raise.

Short Answer Question 2 of 3

In December 2015, Adolf was driving his car when the vehicle suddenly lurches off the road and into a tree. Although Adolf is properly wearing his seat belt, he suffers facial injuries when his windshield shatters.

Adolf had been heading home from an appointment with his dentist, who had treated Adolf for a cavity. At the end of the dental appointment, Adolf used a new dental rinse to freshen his breath.

Winston, another motorist, sees the accident and stops to render assistance. He smells the mouthwash and mistakenly assumes that Adolf had consumed alcohol. Winston then uses his cell phone to call for an ambulance, advising the dispatcher that he is at an accident scene involving a "drunk driver who got cut up pretty bad."

Adolf is taken by ambulance to a local hospital, where his facial injuries require numerous stitches, leaving him with permanent scars. However, a blood test shows no evidence of alcohol ingestion.

Seven months later, Adolf retains your law firm to bring a claim for her damages. Your subsequent investigation reveals the following three things:

- Adolf's car had been serviced at Auto-Plus just three weeks before the accident and had undergone a wheel alignment. The accident occurred when a new steering cable installed by Auto-Plus slipped out of position.
- The steering cable had been manufactured by the Ohio Car Cable Company. Unbeknownst to Auto-Plus, Ohio Car Cable's instructions clearly specified that Type 63 wire specifically was needed for the installation, but Auto-Plus used Type 74 wire instead. Most other steering cables allow installers to use either Type 63 or Type 74 wire.
- At the time of the accident, Adolf was speaking on his hands-free cell phone.

Prepare a memorandum, discussing both (1) the claims Adolf can bring against each potential defendant, and (2) the anticipated defenses that each defendant would likely raise.

Short Answer Question 3 of 3

In December 2015, Finn, age seven, and Finn's mother, Mom, spent the morning at Dizzy-Knee Land, an amusement park. Finn decided to ride the Ferris wheel. Mom, who was pregnant and tired, waited for Finn about 150 yards away.

After Finn entered a Ferris wheel car, the Ride Attendant fastened the car's safety bar. As the Ferris wheel began to turn, Finn could hear loud screams from a car carrying two other boys, both eight years old. The boys were rocking their car vigorously. Ride Attendant also heard the two boys screaming and saw them rocking their car, but Ride Attendant took no action to stop them.

As Finn's car began to descend from the top of the wheel, the two boys—whose car was right behind Finn's car—shook the safety bar on their car hard enough that it unlatched. Both boys fell to the ground. One of the boys struck Finn on his way down.

After the two boys fell, Ride Attendant stopped the Ferris wheel and sounded an emergency alarm to notify Dizzy-Knee Land emergency personnel of the incident.

Mom did not see the accident, but she heard the alarm and rushed to the Ferris wheel. A crowd had already gathered, and Mom was unable to see Finn. A bystander told Mom that "a little boy has been killed." Mom, panic-stricken, attempted to make her way through the crowd but could not.

Fifteen minutes later, the two eight-year-old boys who had fallen were taken to the hospital by an ambulance.

Meanwhile, Finn and several of the other passengers begged to be taken off the Ferris wheel. Ride Attendant, however, refused without any explanation to restart the Ferris wheel. Forty-five minutes later, a Dizzy-Knee Land manager showed up and ordered Ride Attendant to restart the Ferris wheel and allow the passengers to exit.

About an hour after the accident, Mom was finally reunited with Finn. Both Finn and Mom went to the hospital, where Finn was treated for minor injuries caused by being hit when the two boys fell. While at the hospital, Mom suffered a miscarriage as a result of accident related stress.

National accident records show that since 1973, there has been only one other incident in which injuries have occurred as a result of passengers rocking a Ferris wheel car. Dizzy-Knee Land has conceded that Ride Attendant was acting within the scope of his employment.

Prepare a memorandum, discussing both (1) the claims that Finn and Mom can bring against Dizzy-Knee Land, and (2) the anticipated defenses that this defendant would likely raise.

Statutory Appendix – use for all 3 short answers

Exam Stat. 100

It is a class C misdemeanor for an individual to drive a motorized vehicle without a current driver's license for that class of vehicle.

Exam Stat. 200

An action for tort liability must be brought within one year of when the cause of action accrues. Such action does not accrue until there has been either discovery of the facts constituting the liability or discovery of the facts sufficient to put a person of ordinary intelligence and prudence on an inquiry which would lead to such discovery.

Exam Stat. 300

A claimant must bring a health care liability claim not later than four years after the date of the act or omission that gives rise to the claim. This subsection is intended as a statute of repose so that all claims must be brought within four years or they are time barred.

Exam Stat. 400

Except as provided in Exam Stat. 200 & 300, the following actions shall be commenced within three years of discovery or be barred: An action to recover damages for injuries to the person, including an action to recover damages for injuries to the person caused or sustained by or arising from an accident involving a motor vehicle.

Exam Stat. 500

Punitive damages shall be allowed in civil actions only upon clear and convincing evidence that the acts of the defendant show deliberate disregard for the rights or safety of others. The court shall specifically review the punitive damages award and shall make specific findings.

Exam Stat. 600

The following are necessary elements of proof that an injury or death resulted from the failure of a health care provider to follow the accepted standard of care:

- (a) Such failure was a proximate cause of the injury or death; or
- (b) The health care provider's failure to follow the accepted standard of care deprived the patient of a chance of recovery or increased the risk of harm to the patient which was a substantial factor in bringing about the ultimate injury to the patient, the plaintiff must also prove, to a reasonable degree of medical probability, that following the accepted standard of care would have resulted in a greater than twenty-five percent chance that the patient would have had an improved recovery or would have survived.

Exam Stat. 700

In a civil action for damages, the plaintiff's contributory negligence, if any, which is 50% or less of the total proximate cause of the injury or damage for which recovery is sought, does not bar his recovery. However, the total amount of damages to which he would otherwise be entitled is reduced in proportion to the amount of his negligence. This is known as comparative negligence. If the plaintiff's contributory negligence is more than 50% of the total proximate cause of the injury or damage for which recovery is sought, the defendant[s] shall be found not liable.

Exam Stat. 800

Any individual using any type of cell phone, in any manner, while operating a motor vehicle shall be fined \$500.

END OF EXAM