

# WIDENER UNIVERSITY SCHOOL OF LAW

## TORTS

## FINAL EXAM

Professor Pope

Fall 2011

### 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-one (21) 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 exam number) on the exam.
7. **Timing:** This exam must be completed within four hours (9:30 a.m. to 1:30 p.m.).
8. **Scoring:** There are 240 total points on the exam, approximately one point per minute. The midterm exam comprises 75% of your course grade, 240 of the 320 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. 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 25 multiple choice questions worth three points each, for a **combined** total of 75 points. The suggested total completion time is **75 minutes** (3 minutes each).

**PART TWO** comprises one essay question worth 65 points. The suggested completion time is **65 minutes**.

**PART THREE** comprises one essay question worth 100 points. The suggested completion time is **100 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. Your course letter grade is computed by summing the midterm, final, and quiz scores. Those sums will be converted into a scaled score and letter grade, based on the class curve. The applicable law school mandatory curve in this class permits a maximum average grade of 2.30 to 2.75. At least 10% of the students must receive grades of B+ or above, and at least 10% of the students must receive grades of D+ or below. I will post an explanatory memo and a model answer to TWEN 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. **Identification:** Write your exam number: (a) on the first page of this exam booklet, **and** (b) on the Scantron form. Please also (c) fill in the ovals corresponding to your exam number.
2. **Fill the Oval on the Scantron:** For each question, **fill in** the oval on the Scantron with a number 2 pencil corresponding to the **best** answer choice.
3. **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 PARTS TWO & THREE:**

1. **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.
2. **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.**
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 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.
4. **Answer Format:** This is important. **Use headings and subheadings.** Use short single-idea paragraphs, and leave a blank line between paragraphs. Do **not** completely fill the page with text. Leave white space between sections and paragraphs.
5. **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.
6. **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?
7. **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.
8. **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.
9. **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.

**STOP !**

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

# PART ONE

**25 questions worth three points each = 75 points**

**Suggested time = three minutes each = 75 minutes**

1. **The tort of assault is committed ONLY if the court is satisfied that, among other things:**
  - A. The plaintiff believed that the defendant would create offensive bodily contact at some point in the future, even the distant future.
  - B. The defendant was capable of causing the plaintiff to suffer serious bodily harm.
  - C. The defendant intended to cause an injury to the plaintiff.
  - D. The defendant somehow made contact with either the plaintiff or something that was touching the plaintiff's body.
  - E. None of the above
  
2. Madison and Rachael were both operating motor vehicles involved in a collision in the state of North Pennsylvania, a contributory negligence jurisdiction. Madison sustained physical injuries and sued Rachael for negligence. The jury returned this special verdict form:
  - What percentage, if any, was Madison's negligence responsible for his own injuries? - 10%
  - What percentage, if any, was Rachael's negligence responsible for Madison's injuries? - 90%
  - What dollar amount represents the total damages incurred by Madison, regardless of responsibility? - \$100,000

**Which of the following statements is most correct?**

- A. Madison will be awarded \$110,000 in damages, to be paid by Rachael.
- B. Madison will be awarded \$100,000 in damages, to be paid by Rachael.
- C. Madison will be awarded \$10,000 in damages, to be paid by Rachael.
- D. Madison will be awarded \$90,000 in damages, to be paid by Rachael.
- E. Madison will be awarded no damages.

3. Gabe built a storage shed on a piece of land. That land actually belongs to Gabe's neighbor, Finn. **Which of the following statement is TRUE?**
- A. Gabe did not commit the tort of trespass, if both he and Finn believed that the land actually belonged to him.
  - B. Gabe did not commit the tort of trespass, if Finn consented to his actions.
  - C. Gabe has an absolute right to leave the storage shed on Finn's land, as long as he compensates him for his losses.
  - D. In determining whether or not Gabe committed the tort of trespass to land, a court would first decide whether the storage shed increased the value of Finn's property.
4. **The concept of reasonable foreseeability is satisfied only if:**
- A. The plaintiff has proved, beyond a reasonable doubt, that he or she in fact suffered a loss that was caused the defendant's carelessness.
  - B. The defendant's behavior was virtually certain to inflict a loss on the plaintiff.
  - C. The plaintiff has proved, on a balance of probabilities, that he or she in fact suffered a loss that was actually caused the defendant's carelessness.
  - D. The defendant's behavior was more likely than not to inflict a loss on the plaintiff.
  - E. None of the above.
5. Assume that the state of East Delaware has a statute under which Ellen would recover \$60,000 of her \$300,000 in damages because a jury found her to be 80% negligent in the accident in which she was injured.

**East Delaware has adopted:**

- A. The defense of pure comparative negligence.
- B. The defense of modified comparative negligence.
- C. The defense of contributory negligence.
- D. The defense of assumption of the risk.
- E. The defense of negligence per se.

6. In response to a number of accidents involving pedestrians, a city enacted a statute making it illegal to walk through the business district other than on the sidewalk. The city also enacted a statute making it illegal for a business to obstruct the sidewalk in front of its establishment. Mr. Bean was walking along the sidewalk when he discovered that a store has stacked a pile of boxes such that the sidewalk was totally obstructed. Mr. Bean stepped into the street to walk around the boxes and was struck by a negligently driven taxi. This jurisdiction follows contributory negligence rules.

**If Mr. Bean asserts a claim against the taxi driver, what will be the effect of Mr. Bean's leaving the sidewalk and walking in the street?**

- A. It will bar his recovery as a matter of law.
  - B. It will reduce his recovery.
  - C. It may be considered by the trier of fact on the issue of the taxi driver's liability.
  - D. It is not relevant to determining Mr. Bean's rights.
7. Fitz was a non-union laborer working at a site involved in a labor dispute. Every morning, Fitz would be accosted by the picketers who would urge him not to work. One morning, a picketer stopped him and said, "Do not go to work." Fitz said, "Get out of my way." The striker said, "Make me, scab!" Intending to frighten the striker, Fitz swung his hammer at him. But the head of the hammer flew off and hit the striker.

**If the striker sues Fitz for battery, he most likely will:**

- A. Prevail, because he was struck by the hammer head.
- B. Prevail, unless he intended to provoke Fitz.
- C. Not prevail, because the negligence of the hammer manufacturer was the direct cause of the injury.
- D. Not prevail, if a reasonable person would have been angered by what the striker said.

8. The Widener Law SBA president invited the class of 2014 to celebrate the end of fall exams at his home. When the sun began to set, a student built a bonfire in the backyard. The student continued to feed the flames until the bonfire was quite large. Suddenly, a gust of wind blew the flames to a neighboring property, igniting the neighbor's shed.

**If the neighbor sues the student in negligence for damages to the shed, under which of the following arguments, if sustained by the facts, would the student most likely avoid liability?**

- A. The lighting of bonfires at the end of law exams is an accepted custom in the community.
  - B. The bonfire was positioned by the student in the center of the backyard to avoid damaging the neighbor's shed.
  - C. The fire that started would have burned itself out but for the fact that the neighbor's shed was built of substandard, highly flammable material.
  - D. The student was a guest on the SBA president's property and entitled to restricted scope of liability.
9. Macaulay was a 13-year-old boy living at home with his parents. His parents were having a dinner party. Still angry about being left "Home Alone," last year. Macaulay set up a practical joke where a bucket of water is balanced on a partially-opened door so that the next person to enter the room is drenched. Macaulay set the filled bucket on the door of the guest bedroom, knowing that his father would take the guests' coats there. In fact, Macaulay's father did not use that room for the coats. But a guest later mistakenly wandered into that room. As the guest opened the door, the metal bucket fell on him, causing a five-inch cut that required stitches.

**In an action by the guest against Macaulay, the court should determine the boy's culpability according to:**

- A. The presumption against negligence afforded to all minors.
- B. The age, experience, and intelligence of an ordinarily prudent minor in circumstances like Macaulay's.
- C. The standard applicable to adults.
- D. None of the above.

10. Harold borrowed a car from Kumar to go on a date. Kumar warned Harold that the gas gauge was faulty, so to fill up the tank before picking up his date. Running late, Harold decided to get gas on the way home. At dinner, Harold had too much to drink, and asked his date to drive home. Because he was drunk, Harold forgot to tell his date to stop for gas. While going through an intersection, the car stalled because it ran out of gas. A driver, who ran a stop sign, crashed into and injured Harold and his date. If the car had not run out of gas, the car would not have stalled. This jurisdiction has adopted pure comparative negligence.

**If Harold asserts a claim against the driver, Harold will:**

- A. Recover in full for his injury, because his date, who was driving the car, was not herself at fault.
  - B. Recover a portion of his damages, based on the respective degrees of his negligence and that of the driver.
  - C. Not recover, because his girlfriend had the last clear chance to avoid the accident.
  - D. Not recover, because Harold was primarily at fault for the collision.
11. Maids-R-Us was given a key to Tom's house, so that its employees could clean while Tom was at work. After a maid sent by Maids-R-Us had finished and left Tom's house, she went back because she had forgotten her cigarette. She forgot to lock the door the second time, because she was, by then, late for her next job. When Tom returned, he discovered that the house has been ransacked and his flat screen monitor was gone. The front door was open and there were no signs of forced entry.

**If Tom brings an action against Maids-R-Us, he will likely:**

- A. Not prevail, unless a statute or regulation requires that contracted maids lock the customer's doors.
- B. Not prevail, because the act of the burglar is an independent, superseding cause of Tom's loss.
- C. Prevail, because the maid's failure to lock the door created the risk that someone might enter and take Tom's valuables.
- D. Prevail, because when the maid returned after having completed her work, she was technically a trespasser.

12. While driving his car, defendant experienced a heart attack. Defendant's car crossed the center line in violation of the Vehicle Code and headed at plaintiff's car which was speeding. Plaintiff, seeing defendant's car headed at him, swerved to avoid the collision. In doing so, plaintiff's car spun out of control and crashed into a ditch, injuring plaintiff. This jurisdiction follows traditional contributory negligence rules.

**In plaintiff's suit against defendant for injuries sustained in the accident, plaintiff will:**

- A. Prevail, because defendant's act was a substantial factor in causing plaintiff's car to swerve.
  - B. Prevail, because defendant violated a statute by crossing the center line.
  - C. Not prevail, because the defendant had no prior history of heart trouble.
  - D. Not prevail, because plaintiff was exceeding the speed limit.
13. Passenger suffered a broken bone from an automobile accident after Driver ran a red light. Passenger was taken by ambulance to Hospital. There, the emergency room physician negligently reset the bone. As a result, Passenger never recovered full use of his arm. His earnings as a laborer were reduced.

**If Passenger brings suit against Driver for damage to his arm, Passenger will recover:**

- A. All his damages, including permanent disability.
- B. The portion of his damages attributable to a properly treated broken arm.
- C. Half his damages (the other half coming from the physician).
- D. No damages.

14. An employee at Walmart informed Blart, the head of security, that she suspected a customer of shoplifting. The employee pointed out the suspected shoplifter. But Blart thought she was pointing at a different person. Blart waited until the customer left the store. He followed her outside and then suddenly pointed a gun at her. He said she needed to return with him to the store's security office. The woman did so even though she insisted that she did nothing wrong. The woman was kept in the office for a few minutes until the employee told Blart that he got the wrong customer.

**If the woman sues Walmart on a theory of false imprisonment, she will:**

- A. Prevail, unless Blart's belief that she was the shoplifter is judged to be reasonable.
  - B. Prevail, because she was intentionally detained.
  - C. Not prevail, because the period for which she was detained was the minimal period necessary to establish her identity.
  - D. Not prevail, because she suffered no harm.
15. A law student received a telephone call asking her to meet with the Dean, whom she had never met. As she was waiting in the hallway to meet the Dean, the law school janitor, Willy, introduced himself as the Dean. Willy, a large man, asked the student to step into his office, closing the door behind him. For several minutes, Willy asked a series of flirtatious personal questions, causing the law student to grow very uncomfortable. However, she did not leave the office out of concern for her academic standing. The actual Dean eventually returned to his office and ended the questioning.

**If the student sues Willy for false imprisonment, she is most likely to:**

- A. Prevail, because Willy was a large man who could have physically harmed her if she tried to leave the room.
- B. Prevail, because she would not have stayed in the room, if Willy had not pretended to be the Dean.
- C. Not prevail, because Willy would have let her leave if she wanted.
- D. Not prevail, because she had no reason to believe that she could not leave.

16. McBain drove his car into an intersection and collided with a fire engine that had entered the intersection from McBain's right. The accident was caused by McBain's negligence. As a result of the accident, the fire engine was delayed in reaching Lisa's house, which was entirely consumed by fire. Lisa's house was located about nine blocks from the scene of the accident.

**If Lisa asserts a claim against McBain, Lisa will recover:**

- A. That part of her loss that would have been prevented, if the collision had not occurred.
  - B. The value of her house before the fire.
  - C. Nothing, if McBain had nothing to do with causing the fire.
  - D. Nothing, because McBain's conduct did not create an apparent danger to Lisa.
17. Jennifer was on a Delta flight to Phoenix when she saw another passenger snatch several mini-bottles of alcohol from the serving cart. Jennifer told the flight attendant. The flight attendant alerted Delta's on-board air marshal, who approached the passenger, displayed his gun, and demanded that she step into the service area for questioning. The accused passenger quickly complied. On further investigation, it was determined that the woman was mistaken and she had actually just seen the First Class attendant getting more supplies for the other cart.

**If the passenger sues Delta on a theory of assault, she likely will:**

- A. Prevail, because the guard displayed his gun.
- B. Prevail, because Delta's belief that she was stealing was unreasonable.
- C. Not prevail, because she suffered no injury.
- D. Not prevail, because Delta is not responsible for Jennifer's unreasonable mistake.

18. Tiger, a professional and world-class golfer, wanted to undermine her main competitor, Alvaro. At midnight on the night before a tournament, Tiger called Alvaro, waking him from a deep sleep. Pretending he was a police officer, Tiger told Alvaro that his parents had just been attacked by a burglar in their home, were shot at gunpoint, and were in the hospital's Intensive Care Unit. Tiger also said that Alvaro's parents were unlikely to survive. Tiger knew that Alvaro, an only child, and her parents were exceptionally close, and that Alvaro would be extremely upset. That night Alvaro suffered a panic attack. Even though Alvaro learned the next day that the call had been a hoax, he continued to suffer regular panic attacks, loss of sleep, nightmares and extreme anxiety about losing her parents.

**Is Tiger likely liable to Alvaro?**

- A. Yes, if Alvaro had physical manifestations of distress.
  - B. Yes, if a jury determined that Tiger's conduct was outrageous.
  - C. No, because Tiger used words and not actions to harm Alvaro.
  - D. No, because Alvaro should have immediately suspected that the call was fake.
19. Lisbeth, a physical therapist, is severely allergic to all perfumes. All her clients know about her condition and they know to remove any scented products before they work with her. Corzine, a long-term client of Lisbeth's, was angry that he was not healing faster and decided to douse himself with very strongly scented aftershave to annoy Lisbeth. Upon arriving at Lisbeth's clinic, Corzine's scent wafted all over the premises and caused Lisbeth to experience a severe anaphylactic shock, requiring medical treatment.

**What damages could Lisbeth recover from Corzine?**

- A. Compensatory and punitive damages for assault and battery.
- B. Compensatory, nominal and punitive damages for battery and negligence
- C. Compensatory and punitive damages for battery.
- D. No damages because Corzine intended to annoy not harm Lisbeth.

20. Neil and Nedra are roommates in an apartment. Neil was annoyed with Nedra because she had recently borrowed Neil's Torts hornbook without asking. Determined to make Nedra's life miserable, Neil sprinkled itching powder on the shag rug in Nedra's bedroom. Because the itching powder and shag rug were both off-white, the presence of the itching powder was not obvious. Neil knew that Nedra usually did about an hour of stretching exercises each night, and knew that Nedra usually did her exercises barefoot. As expected, Nedra's feet touched the itching powder. Unknown to Nedra or Neil, Nedra was allergic to the powder. When her feet came in contact with the powder, Nedra had a severe allergic reaction and ended up in the emergency room.

**In bringing a claim against Neil, Nedra could at most recover:**

- A. Nominal damages.
- B. Nominal damages and medical expenses.
- C. Medical expenses, any lost wages, pain and suffering.
- D. Medical expenses, any lost wages, pain and suffering, and punitive damages.

21. Teri worked at a steel refining plant. Sean, a client visiting the plant, failed to look where he was going one day, and carelessly knocked over a container of machine parts. Some of these parts were round and rolled onto different areas of the plant's floor. Teri's co-worker, Neil, who was operating a welding torch, stumbled when he stepped onto one of these machine parts. His welding torch, which blasted flames, flew out of his hands and landed near a cauldron of melting steel. The cauldron of melting steel ignited, setting the surrounding area on fire. Neil was engulfed in flames, and suffered severe burns.

Many yards away, at the other end of the plant, Teri witnessed Sean's knocking over the container, Neil's slip and fall and Neil being engulfed in flames. Neil survived the accident, but was hospitalized for weeks. Teri was not part of the accident or physically harmed by it in any way, but she was traumatized by witnessing it. She had recurring nightmares and flashbacks about Neil being burned, became unable to enter the plant without suffering uncontrollable shaking, and had severe panic attacks whenever she saw any flame, no matter how small. Teri received treatment for her trauma, and had to take a disability leave from work.

**Teri sued Sean for her emotional and physical injuries. You represent Sean. Your best argument would be to:**

- A. Move to dismiss Teri's claims because she was not a foreseeable plaintiff.
- B. Move to dismiss Teri's claims because she did not suffer sufficient physical or mental injury.
- C. Move to dismiss Teri's claims because she was negligent in observing the accident.
- D. Move to dismiss Teri's claims because she did not suffer a foreseeable injury.

22. Standing on a crowded city sidewalk, Patton and Harvey, strangers, were standing side by side waiting for the city bus. Patton was talking loudly on his cell phone. Harvey made a point of glaring at Patton, hoping that he would either stop talking or lower his voice. Patton kept talking loudly, seeming to ignore Harvey's glares. Harvey faked a cough, and then spat directly at Patton's feet. Spit landed on Patton's worn and soiled hiking boots.

**Patton sues Harvey for spitting on his boots. As the judge, you should:**

- A. Grant a motion to dismiss because Patton did not suffer actual damages.
  - B. Grant a motion to dismiss because Patton could be expected to be spat upon while waiting for the bus on a crowded city sidewalk.
  - C. Deny a motion to dismiss because Patton had no duty to mitigate his damages.
  - D. Deny a motion to dismiss because Patton suffered an offensive contact.
23. Driving his car on a busy and fast-moving city highway, Spike crashed into Lessandra's car when it suddenly and unexpectedly stopped in front of him. Lessandra's new car had stopped when it ran out of gas. Before she started driving, Lessandra noticed the engine light signaling her to refuel, but thought she could drive for several miles before she would run out of gas.

**Which of the following statements is most accurate?**

- A. Spike would not be expected to foresee an accident on a fast-moving city highway.
- B. Spike assumed the risk of injury when he drove on a fast-moving city highway.
- C. Lessandra is the cause of Spike's damages.
- D. Lessandra's failure to refuel contributed to causing Spike's damages.

24. Maykoh's Garage Inc. operates an automobile repair garage in a very secure, quiet, and rural part of the state. Hogan brought his truck to Maykoh's for repairs. To make repairs, Maykoh's had to order a part for Hogan's truck. While waiting for the part to be delivered, Maykoh's stored Hogan's truck in an unfenced area between the garage and an adjacent street. While Hogan's truck was stored there, its transmission disappeared. Maykoh's never learned how the transmission was taken, never recovered it, and told Hogan it had been stolen. Hogan sued Maykoh's for failing to use reasonable care in protecting his truck while in Maykoh's custody. At trial, Maykoh's owner testified that the other garages in the area regularly stored vehicles in unfenced areas.

**The judge should rule that:**

- A. Because Maykoh's adhered to the customary practices among garage owners in the area, Maykoh's did not breach its duty of care.
  - B. Because other garage owners regularly left cars in unfenced areas, their customary practices determined what the reasonably prudent garage owner would do under similar circumstances.
  - C. The fact finder could consider the customary practice of leaving cars in unfenced areas as evidence of Maykoh's reasonable behavior.
  - D. Customary practice should be inadmissible because leaving cars in unfenced areas is unreasonable.
25. Baze is a professional jockey who has been riding in horse races for ten years. Just after he left the starting gate, Baze's horse veered away from another horse approaching on his right, and stumbled on a clod of dirt in the racetrack. Baze fell and injured his back. Baze sued the racetrack owners for failure to use due care in maintaining the racetrack.

**As counsel for the racetrack, your best argument to reduce or prevent liability is to argue:**

- A. Eliminating clods is too expensive compared to the occasional injuries that occur from stumbling horses.
- B. Racetrack owners customarily have clods of dirt in their racetracks.
- C. Baze assumed the risk of racing-related injuries because he was experienced with horse racing, knew about the severity and likelihood of risk, and chose to participate.
- D. Baze's damages should be reduced by Baze's negligence in controlling the horse.

# PART TWO

**1 essay question worth 65 points**

**Suggested time = 65 minutes**

Lindsey Anderson attended a dinner at the Wilmington Community Church in the state of East Delaware. It was a fundraiser for a church mission to South Africa. Lindsey paid \$25 for the meal. But she soon contracted food poisoning and died. The cause was E-coli bacteria. A number of other people at the event also were sickened.

The source of harm was ground beef made into meatballs in the church kitchen. Tyson Meats produced the ground beef. Hole Foods sold the ground beef in its original package to Church. Genetic tests on the E-coli that killed Lindsey show that it is a match for bacteria found at Tyson's facility. There is, however, no evidence of negligence on the part of Tyson or Hole Foods.

The state health inspector found that the church cooks wore gloves while preparing the food. Although one of the three sinks in the kitchen was designated for hand washing while the other two were for use in food preparation, in fact all three were used for hand washing. Also, when the meatballs came out of the oven, the cooks did not use a meat thermometer to make sure that they were cooked. Instead, they cut open a couple to see if they were done.

E-coli bacteria are a common health hazard in meat preparation. The bacteria are usually killed by cooking meat to at least 160 degrees. However, if the cooked meat comes in contact with surfaces, utensils, or hands that have already been contaminated, the meat can be re-infected.

**Lindsey's family has contacted you to ask whether any entity could be liable for Lindsey's death. Discuss whether Tyson, Hole Foods, and/or Church could be liable for her death and on what basis. Potentially relevant sections of the East Delaware Code are on the last two pages of the exam.**

# PART THREE

**1 essay question worth 100 points**

**Suggested time = 100 minutes**

Landersun was checking out “Cupcake Supply, Inc.” on Main Street in the state of East Delaware. After perusing the offerings on the first floor, he climbed the rickety stairs to the second floor of the rustic shop. When he got there, he ran into Greg Owner, a former high school friend with whom he’d had a falling out years ago. Greg was the sole owner of the business and the building in which it was housed. Their conversation was friendly at first, but as they began to rehash old conflicts, it became more heated. Eventually, Greg asked Landersun to leave his store.

Landersun refused. “It’s a free country,” he said. He stood his ground after Greg repeated his request several times. Landersun finally turned to leave a couple minutes later, after Greg picked up the phone to call the police. As he bounded down the stairs toward the exit, clad in flip-flops, Landersun looked back at Greg and offered a few parting words. At that moment, he lost his balance. He reached toward the side of the stairwell as he tumbled, but there was no banister for him to use to catch himself. Landersun fell down seven steps, landing hard at the base of the stairs. He cut his leg in the fall, and began losing a lot of blood.

Greg was still feeling angry at Landersun. Though he was a paramedic on the local rescue squad, he didn’t assist Landersun after he fell. Instead, Greg called 911, then stormed away in anger. When the ambulance arrived, Landersun was transported to the hospital for treatment. Landersun’s leg healed relatively quickly. However, because he had lost so much blood, Landersun required a transfusion in the hospital. Due to a defect in the local blood supply, Landersun developed a rare, blood-borne illness that will affect his health significantly.

After the incident, Landersun had a building contractor look at the stairwell where he had fallen. The contractor discovered that the tread depths were shallower than required by the local building code, and that some of the treads near the top of the stairway were loose. He is now considering suing Greg for damages, including those relating to his blood-borne disease. Landersun has retained your firm’s services.

**Your assignment is to draft a memo for your senior partner identifying and analyzing the potential legal and factual bases for any claims that Greg is liable for damages relating to Landersun’s injuries, including his illness, anticipating and analyzing Greg’s responses and potential defenses, and offering counterarguments to those responses and defenses. (You have not been asked to consider the liability of any other party.) Potentially relevant sections of the East Delaware Code are on the last two pages of the exam.**

# East Delaware Code

(Use for the essay problems only)

## East Delaware Code 100

A plaintiff who cannot establish that probably (more likely than not) she would not have suffered the same harm had proper medical treatment been rendered, is entitled to no recovery for the increase in the risk of harm or for the loss of a chance of obtaining a more favorable medical result.

## East Delaware Code 200

- (a) Any physician who treats a patient shall inform the patient about the availability of all alternate, viable medical modes of treatment and about the benefits and risks of these treatments.
- (b) What constitutes informed consent emanates from what a reasonable person in the patient's position would want to know. What a physician must disclose is contingent on what a reasonable person would need to know to make an informed decision.

## East Delaware Code 300

- (a) No action upon a medical, dental, optometric, or chiropractic claim shall be commenced more than four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim.
- (b) If an action upon a medical, dental, optometric, or chiropractic claim is not commenced within four years after the occurrence of the act or omission constituting the alleged basis of the medical, dental, optometric, or chiropractic claim, then, any action upon that claim is barred.

## East Delaware Code 400

No action upon a tort claim shall be commenced more than one year after the injury is discovered or reasonably should have been discovered.

**East Delaware Code 500**

- (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.