

**TORTS EXAMINATION
PROFESSOR GILLES
December 2002**

1. *You will have **2 hours 15 minutes** to complete the exam.*
2. *This is a **closed book examination**. You may not use any materials during the exam.*
3. *Make sure that you **put your examination number on all your bluebooks** and indicate the number of bluebooks you are turning in (e.g., 1 of 2).*
4. *You must **turn in your copy of this examination**. Please write your examination number on **this copy of the exam**.*
5. *This examination consists of one fact pattern followed by one question. **To answer this question you may only use 12 pages, writing on every line, but on only one side of the page. I will not read beyond the assigned page limit.** Only write on the lines. Do not write in the margin. Of course if you cross out several lines, you may use an equivalent amount of additional space.*
6. *Thoroughly discuss all the issues fairly raised by the question. Do not make up any facts or statutes; rather, answer the question as asked.*
7. *This is a torts examination. Your (or my) **personal opinions** about the value of any of the activities described in the question are not responsive to the question.*
8. *You are bound by the Honor Code.*

EXAM NO. _____

Good luck.

FACT PATTERN

This question is set in the State of Capital.

On November 1, 2001, Myron (a world famous heart transplant surgeon) arrived home in his brand new BMW. He parked in his attached garage and then pushed the remote control to close his garage door. The garage door lurched and then stuck half closed. Despite repeated tries the door would not move so Myron called Dan (who advertised in the yellow pages as “Dan the Doorman – prompt and efficient - over 50 years of expertise in garage door repairs”). Myron made an appointment for the next morning.

Dan came out and worked on the door for two hours. He told Myron that both of the lifting cables were frayed and had to be replaced. Dan, who was over 73 years old, explained that he had had a hard time replacing the cables because he had arthritis in all of his fingers and that made it tough to get the screws tight into the wall. “I’m hoping Santa will bring me a power screw driver for Christmas. They are on sale for only \$49.99 at Sears. With a power tool I could get the screws in all the way with ease,” he explained. He also mentioned that although it was customary for most in the garage door repair businesses to get the screws in to a depth of 1 inch, he had determined over his years of work that a 2 inch depth should usually be used just to be safe. “But I got the screws in to a depth of at least 1½ inches, so it should be even safer than the industry standard,” he told Myron.

The door worked fine for two days (Myron and his wife went in and out approximately 6 times during those two days). However, on the morning of the third day (November 5, 2001), as Myron was exiting the garage, disaster struck. The door went up smoothly, but then there was a loud “twang,” and the door reversed direction hitting the front of Myron’s BMW. Later examination reveals that the door fell because the screws on the left side failed to hold, even though Dan had screwed them in to a depth of 1 ½ inches (if the screws had been screwed in to a depth of 2 inches the door would have held).

Myron extricated his car, examined it (including lifting the hood) and saw only dents to the body work. He made an appointment to get the car fixed later that day. Just then his phone rang – it was his hospital. “Get here as fast as you can,” advised his nurse, “They just brought a patient in for a transplant and you are the only one who can save her.”

Despite knowing of the car’s damaged condition, Myron felt he had no choice but to drive to the hospital (taxi took hours to get to his house). He jumped into his car and drove to the hospital. About 1 mile into his trip Myron’s car stalled in the middle of an intersection, blocking the traffic. He tried to restart the car without success, and then got out and started to push the car to a safe position at the side of the road. At that moment, a motorcyclist (Mike), despite using all reasonable care, collided with Myron’s car. There was relatively little damage, but Myron’s right hand was caught in his car door and crushed.

Myron was rushed to hospital. His right hand was severely injured; in fact there was only a 48% chance that he would recover any use of the hand. During Myron’s treatment two bizarre events occurred. First, Doctor Susan negligently set the cast on Myron’s hand. This error eliminated

any chance that Myron would recover the use of his hand. Second, the doctors discovered that Myron had a rare unrelated blood disease (called tortosis). The doctors predict that Myron has a 95% chance of dying from tortosis within 2 years.

An expert who later examined Myron's car will testify that there is a 53% probability that the car stalled due to damage inflicted by the garage door. The expert will testify that such damage would have been almost impossible to detect at the time, even when all care was used to inspect the car.

On Friday (December 6, 2002), Myron filed a negligence suit against Dan and Doctor Susan seeking \$10 million in damages (because his hand injury prevents him from pursuing his career as a transplant surgeon). Myron had delayed filing suit until Friday because of Dan's repeated assurances that he would "settle, but was working out an exact figure to offer." Dan never made an offer and now denies liability.

QUESTION: Please discuss whether Myron can state a claim for negligence against Dan and Doctor Susan? Are there any defenses?

Doctor Susan has conceded that she breached her duty of care and that she was the proximate cause of any harm, so as to Doctor Susan you should ONLY address cause in fact and damages.

In addition to your general knowledge of tort law, research by an associate reveals the following:

1. Capital applies a traditional approach to cause in fact and has refused to adopt any other approach even in medical malpractice cases.
2. Capital has adopted a pure scope of the risk approach to proximate cause (in other words you should not do a separate analysis of intervening acts).
3. Capital has the following statute of limitations:

"Actions for personal injury or death must be brought within 5 years of accrual, except that an action arising out of the construction or repair of a dwelling place must be brought within 1 year of accrual."

4. Capital's Criminal Code provides that

"It is a misdemeanor punishable by a fine of up to \$500.00 for any person to park or stop their vehicle, whether attended or unattended, in a manner that blocks, or partially blocks, an intersection."

5. Capital has a contributory fault system and recognizes all forms of assumption of the risk.

THE END