

TORTS PRACTICE EXAMINATION MAY 1991- SECTIONS B AND M
PROFESSOR GILLES

INSTRUCTIONS:

THERE ARE THREE SECTIONS TO THIS EXAM. WRITE ALL ANSWERS, INCLUDING THOSE TO SECTION I IN YOUR EXAM BOOK, NOT ON THE EXAM ITSELF.

SECTION I CONSISTS OF A SERIES OF MULTIPLE CHOICE QUESTIONS. EACH QUESTION IS FOLLOWED BY A SERIES OF ALTERNATIVE ANSWERS. SELECT THE BEST OF THE STATED ALTERNATIVES. SELECT ONLY ONE ALTERNATIVE, IF YOU MARK TWO ALTERNATIVES YOU WILL RECEIVE NO POINTS. SCORES ON SECTION I OF THE EXAM WILL BE DETERMINED BY THE TOTAL NUMBER OF CORRECT ANSWERS, NOT "RIGHT MINUS WRONG".

QUESTIONS:

SECTION I

1. An action for ultrahazardous activity, plaintiff's contributory negligence is:
 - A. Never a defense.
 - B. Only a defense if it amounts to assumption of the risk.
 - C. Only a defense in cases of blasting.
 - D. Only a defense when the contributory negligence is by a minor.
 - E. Always a bar to recovery.

2. Professor X is driving along the road when Student Y runs a red light and crashes into Professor X. Student Y is severely injured. Professor X helps Student Y into her car and drives toward the local hospital. On the way Student Y starts to hallucinate and leaps from the car to his death. Student Y's family sues Professor X for wrongful death.
 - A. Professor X is not liable because the original accident was caused by the student's negligence per se and this negligence is imputed to his family.
 - B. Professor X is liable because the professor-student relationship creates a duty to rescue.
 - C. Professor X is liable because one who starts to rescue must complete the rescue.
 - D. Professor X is not liable because she took reasonable care to secure the safety of the student during the rescue.
 - E. Professor X is not liable as an action for wrongful death does not arise in automobile cases.

3. Plaintiff purchased Boobi bubble gum at a gas station owned by Guzzlo company. As plaintiff bit into the gum his teeth shattered on a piece of glass in the gum. Plaintiff sued Guzzlo and Boobi on a strict liability theory under Section 402A of the Restatement (Second) of Torts. The result is:

- A. Plaintiff can recover against Boobi, but not against Guzzlo, because Guzzlo is not in the business of manufacturing gum.
- B. Plaintiff can recover against both Boobi and Guzzlo.
- C. Plaintiff can recover against Guzzlo, but not against Boobi because Boobi made no contractual warranty to plaintiff.
- D. Plaintiff can recover against Boobi, but not against Guzzlo, unless there is evidence that Guzzlo negligently interfered with the condition of the product.
- E. Plaintiff cannot recover against either Boobi or Guzzlo.

4. Mrs. X purchases a condo in the Lakeview development next door to the McPherson paint company which has been operating on that site for 12 years. Mrs. X is extremely sensitive to air pollution and three weeks after moving in she has a severe allergic reaction to an emission put out by the McPherson paint company. None of her neighbors have any problem. Mrs. X :

- A. Is absolutely barred from suing for private nuisance because she moved to the nuisance.
- B. Is able to recover for attractive nuisance.
- C. Is able to recover for private and attractive nuisance.
- D. Is unable to recover for private nuisance because her injury is due to her own extremely sensitive condition.
- E. Is able to recover for private nuisance.

5. Three police officers chase a suspected car thief. After they apprehended the suspect the officers proceed to beat him with their clubs until he collapses to the ground. Throughout the beating the suspect offers no resistance. The suspect sues the police officers and their employer the City of Capitol. The suspect:

- A. Cannot recover against the City because the officers were acting within the scope of their employment.
- B. Can recover against the City because the officers were acting in the scope of their employment.
- C. Cannot recover against the City if the City specifically instructed its officers not to use excessive force in making arrests.
- D. Can recover against the City only if the officers are bankrupt.
- E. Can recover against the City only if the City was negligent in its hiring of the officers.

6. Defendant Ami Host invites Plaintiff-Gus Guest to dinner at her house. In the course of the dinner Guest goes to use the bathroom and is injured when a cracked faucet breaks and slices his wrist. Host had noticed the crack three days earlier but had failed to repair it as she was low on cash. She did not warn Guest of the cracked faucet. Guest sues Host in a state which follows the

traditional approach of predicating a landowner's duty on the nature of plaintiff's status on the land:

- A. Host is strictly liable under products liability for failure to warn.
- B. Guest is an invitee and therefore Host is liable because she failed to take reasonable care to ensure that the premises are safe.
- C. Guest is a licensee and therefore Host is liable because she failed to warn of a concealed danger.
- D. Guest is a licensee and therefore Host is liable because she failed to take reasonable care to ensure that the premises are safe.
- E. Host is liable because she failed to act as a reasonable landowner would have acted in the circumstances.

IMA SYCK woke up one Saturday feeling very sick. He had a throbbing head and a sore throat. Syck went to consult DOCTOR BEWELL, his family doctor for the last ten years. Doctor Bewell prescribed a new drug "Wonderhead" made by ACORP to cure head colds. Doctor Bewell's only comment to Syck is, "This drug should clear up your head real fast."

Syck took his prescription to P-MART, a general store with a discount pharmacist department. Pharmacist FILUX filled the prescription and sold the drug "Wonderhead" to Syck for \$10.09. The drug container had a warning on it which read as follows:

DO NOT TAKE WITH ALCOHOL OR A SEVERE REACTION MAY OCCUR, INCLUDING BUT NOT LIMITED TO STROKES, BRAIN DAMAGE AND TEMPORARY OR PERMANENT IMPAIRMENT OF SENSES.

As he handed the drug to Syck, Filum stated, "Remember, don't drink with this".

In fact the literature on "Wonderhead" which ACORP sent to Doctor Bewell informed him that drinking while taking "Wonderhead" was extremely dangerous and could cause strokes, brain damage, deafness and blindness. The literature also stated that these risks were increased ten fold for epileptics, pregnant women and those with heart conditions. ACORP's literature requested that this information be passed on to the patient. Syck is an epileptic.

Two days after seeing Doctor Bewell, Syck was still taking "Wonderhead" but his head cold had cleared up somewhat and he decided to go out drinking with his buddies. After two beers he felt a ringing in his head and his vision began to blur. He continued to drink but after only one more beer, he collapsed and was rushed to the local hospital. He was diagnosed as being blind in both eyes and deaf in one ear.

Syck comes into your office for legal help. You consult the three of the doctors who treated Syck in the local hospital. All agree that Syck's blindness and deafness were caused by an epileptic reaction to the drug "Wonderhead" brought on by its combination with alcohol.

Who can Syck sue and on what theory? What defenses, if any are available to each defendant?

SECTION III

on the subject of proximate cause, Prosser comments:

Though there are countless variations of theory in this area of the law of torts, two contrasting theories of legal cause recur throughout the cases and account for most of the conflict with respect to the choice of a basic theory. One of these theories is that the scope of liability should ordinarily extend to but not beyond the scope of the "foreseeable risks" -that is, the risks by reason of which the actor's conduct is held to be negligent [see, *The Wagon Mound (No.1)*]. The second, contrasting theory is that the scope of liability ordinarily extends to but not beyond all "direct" (or "directly traceable") consequences and those indirect consequences that are foreseeable [See, *In re Polenis*].

Which approach do you advocate and why? Include in your discussion an explanation of each test and how they differ.