

**TORTS EXAMINATION**  
**PROFESSOR GILLES**  
**December 2001**

1. *You will have **2 hours** 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 margins. Of course if you cross out several lines, you may use an equivalent amount of 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. Bill was 11 years old, but had the intellectual capabilities and understanding of a 6-year-old. One afternoon in late winter, he skipped school to go turkey hunting. He had been given a hunting rifle for his last birthday, and had only gone hunting three times before.<sup>1</sup>

Bill had just entered the public woods (a popular hunting area) when he met Steve who was also hunting. Bill asked for Steve's autograph, because Steve was a renowned hunter (now 90 years old), who wrote the "Safety Tips" column in "Hunters" magazine. Steve asked Bill's age and when Bill mentioned he was going to hunt throughout the woods that day, Steve commented that it was "good to see young boys like you learning the skills of hunting."

Bill continued to hunt, circling through the woods for about an hour. It started to snow and he had had no luck, so he decided to give up. However, Bill heard an unusual bird call coming from a bush on his right. He turned and, without even looking, fired at the noise. Coincidentally, a second shot ran out at exactly the same moment as another hunter, Joe Notme, negligently fired at the noise.

Unfortunately, the "noise" that the hunters shot at was Steve's "falcon decoy caller" he was using to attract peregrine falcons (a rare bird which Steve was hoping to shoot). Because peregrine falcons are exceptionally wary game, Steve had decided not to wear his bright orange safety vest, even though he knew that such vests were a customary safety precaution among hunters in the State of Capital.

As it happened, one bullet sailed harmlessly into the air, but the other bullet hit a heavy branch hanging over Steve's. This bullet severed the branch, which crashed down onto Steve's head, injuring him. (Later ballistic tests were inconclusive as to whose rifle-shot hit the branch, and both Bill and Notme deny that it was their bullet that hit the branch).

After hearing Steve cry out in pain, Bill ran for help. Emergency personnel eventually reached the scene, despite worsening weather conditions and treated Steve's head. Steve was in remarkably good shape and claimed he was now fine. However, in an abundance of caution (given that Steve was 90 and had a head wound), Steve was securely strapped on a stretcher at the back of a snowmobile and sent to the local hospital.

Unfortunately, minutes after Steve left for the hospital a loud explosion was heard. The charred wreck of the snowmobile was found at the foot of a tree, and Steve (still strapped into the stretcher) and the driver lay dead. Emergency Team ("ET") (the company that owned and maintained the snowmobile and employed the driver) does not know why the crash occurred, and

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*1 In Capital it is legal, and indeed typical, for children of ten years and over to own hunting rifles and to hunt. However, statistics show that hunting rifles can cause serious injury or kill, and each year 3.3% of hunters are seriously injured or killed by hunting rifles (whether their own or other's), a figure that triples if the injured hunter is not wearing an orange safety vest.*

a thorough examination of the snowmobile and the crash site reveals nothing about the cause of the crash. An expert for Steve's estate guesses that it may have been driver error.

After Steve's death, his estate immediately filed suit for negligence against Bill and Notme, but delayed for 18 months in filing suit against ET because of ET's repeated assurances that it would "settle, but was working out an exact figure to offer." ET never made an offer and now denies any liability.

**QUESTION: Please discuss whether Steve's estate ("Steve") can state a claim for negligence against Bill and ET? Are there any defenses?**

**IMPORTANT: Do NOT discuss any other possible lawsuits and, in particular, DO NOT DISCUSS whether Steve has a negligence claim against Notme (although your discussion of Bill and ET's liability may refer to Notme's activity).**

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

1. Capital has adopted a "**pure scope of the risk**" approach to proximate cause.
2. 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 against any person involved in the medical treatment of a person or in the transportation of a person to a medical facility must be brought within 1 year of accrual."*

3. Several years before these events occurred, the City of Strot (which encompasses the wood where the accident occurred) passed a City ordinance, entitled "Preservation of the Peregrine Falcon." The ordinance recounted that peregrine falcons were almost extinct in the area and provided that:

*"Any person who hunts a peregrine falcon is guilty of a misdemeanor punishable by a fine of up to \$50,000."*

4. Capital has adopted a **pure comparative fault system**. **Do NOT discuss ANY form of assumption of the risk.**
5. Capital imposes joint and several liability on tortfeasors.
6. Capital has rejected the "rule of sevens," and instead follows the majority approach as to the liability of children.
7. On other issues (where we have studied it) Capital follows the Restatement (Second) of Torts.

**THE END**