CAPITAL UNIVERSITY LAW SCHOOL

CONTEMPORARY MEDICAL LIABILITY TAKE HOME FINAL EXAMINATION

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Tuesday, April 21, 1998

DUE 5PM Friday, May 8th

Course #730

Section #77300

Question I [40 points]

[This question is to be answered as an ordinary essay question]

It is the year 2012, and Mars Sojourner is triumphantly returning to earth after our planet's first manned exploration of Mars. There is one major problem though — one of the crew of eight has died of appendicitis. This occurred even though the trip was planned with just such an exigency in mind. An experienced and specially trained general surgeon, Dr. Albert Collins, a Commander in the U.S. Navy was aboard, and the ship towed a huge special Support Barge to and from Mars. The barge had been constructed prior to the expedition while in Earth orbit, and was built with a state-of-the-art 'hospital' facility including a small, but well-equipped operating room. The core of the barge was designed so that certain laboratories, work rooms and health care facilities, *e.g.*, its exercise room and the 'hospital,' once boarded, could be rotated rapidly enough to create approximately 0.7G (70% of the earth's gravitational effect). Also on board is Dr. Theda Bartholomew, a Ph.D. psychologist who possesses a nursing degree, and is a licensed CRNA, entirely competent to serve as an anesthetist.

During the return voyage, with approximately 35 days until the planned landing at Kennedy Space Center, Phillipe Gaston, a 43 year-old French-Canadian astrophysicist developed obvious signs and symptoms of appendicitis. Dr. Collins, however, declined to operate, instead treating Gaston with I.V. antibiotics. Dr. Bartholomew strongly disagreed and repeatedly urged Collins to operate. NASA's ground crew gave Collins complete discretion in the matter and chose to keep the ongoing episode secret to avoid criticism from those who had warned that the mission was too dangerous.

After four days of increasing fever, a mass developed in Gaston's abdomen which probably resulted from an abscess forming around a ruptured appendix. Collins still refused to operate, stating that arrival at Earth was just a few weeks away, that the abscess could be controlled by antibiotics alone and that the surgery was too risky in space. On the fifth day of illness, Gaston's temperature rose to 105°F and his blood pressure dropped. With these signs of septic shock appearing, Collins agreed to operate and drain the abscess. Unfortunately, shortly after the gravity producing core rotation began, Gaston went into cardiac arrest [unrelated to the artificial gravity], and despite heroic efforts by Collins and Bartholomew, he could not be resuscitated.

Gaston's family filed a wrongful death claim against NASA for medical negligence. NASA choose to defend the suit, claiming that medical care in space should not be held to Earth standards and that Collins is on "loan" from the Navy and not in its employ. What arguments might medical and legal experts on each side offer?

You may correctly assume that there is no medically accepted non-operative treatment for appendicitis and that there are no special statutes or common-law governing negligence in space.

Ouestion II [60 Points]

[This question is to be answered in outline form as discussed below.]

Sarah K. is a 17 year-old sexually active teenager living in Columbus, Ohio, who is far more interested in MTV than in her school work, especially science, which she failed twice. Her parents are vacationing on Eleuthra in the Bahamas on a long weekend, and have left her for three nights with her best girl-friend, Lisa Brown and family.

A year previously, Sarah had undergone laparoscopic surgery for treatment of chronic abdominal pain. As it turned out, the problem was an abscess from a sexually transmitted disease (*i.e.*, an infection) involving her left ovary and fallopian tube both of which, unfortunately, had to be removed. This was all accomplished through a small incision within her umbilicus. Sarah didn't understand too much about the surgery and actually couldn't have cared less.

While at her girl-friend's house she felt ill, lost her appetite and developed mild lower abdominal pain. The Brown's, not wanting to take any chances with their charge, took Sarah to their nearby university-associated hospital emergency room. Mrs. Brown signed all the hospital's papers on behalf of Sarah and even presented Sarah's HMO (HCS Care One) card which the K.'s had thoughtfully left with the Browns.

An evaluation carried out by the emergency room physician, Dr. Scott Martin and a pelvic examination performed by the gynecology resident, Dr. Eloise Nateman resulted in a joint diagnosis of probable early appendicitis. Sarah, however, in the company of Lisa, was entirely distracted by a "hunky" intern and neglected to tell either doctor about her previous surgery, and neither noted Sarah's well healed and perfectly concealed umbilical scar.

Dr. Martin called Dr. Gerald Herman, the general surgeon on-call for HCS, and explained the situation, informing Herman that Sarah's parents would be back in town the next morning. Herman said it didn't sound like appendicitis to him and that in the absence of Sarah's parents there was no sense in seeing her anyway. Martin gave up on getting Dr. Herman to see Sarah, but on the telephone was able to convince internist Dr. Stephanie James of HCS to admit Sarah for observation. Mrs. Brown then contacted the K.'s in Eleuthra, who said they would be back in town by mid-morning of the next day. Lisa and Mrs. Brown both stayed overnight with Sarah in the hospital.

During the night, Sarah became much sicker, and when Dr. James saw Sarah in the morning she was sure Sarah needed immediate surgery. She consulted with close friend Dr. Steven Carter a general surgeon (but not a member of the HCS HMO panel of doctors) who just happened to be seeing a patient in an adjacent room. Carter agreed emergency surgery was needed. In the meanwhile, the K.'s had called Sarah's hospital room to tell her that their flight had been delayed by a severe storm. Sarah put Dr. Carter on the phone who explained that he was sure that Sarah had appendicitis and that she required immediate surgery which was usually "fairly routine." He asked a nurse to call the hospital operator on another phone to listen in on his conversation while he explained the surgery to the K.'s. The operator listened in for a few moments but the call was cut off when power on Eleuthra went out from the storm. Dr. Carter never had the opportunity to tell the K.'s everything about the surgery and they never told him about Sarah's previous surgery.

Mrs. Brown told Dr. Carter she was almost like an aunt to Sarah, that she had Sarah's HMO card and that she would give permission for the surgery. By this time, Sarah was too sick to really think of anything and was just happy to hear Dr. Carter say he would "take care of everything." Mrs. Brown signed all the surgical consent forms for the nurses, filling in any spaces that said "Relationship to Patient" with the word "Aunt."

In his rush to get Sarah to surgery, Dr. Carter also did not note her tiny umbilical scar and she never informed him of the previous operation. During this surgery, however, Dr. Carter found an appendix that appeared to have just ruptured and significant inflammation of Sarah's remaining ovary and fallopian tube. He removed the appendix, half of the ovary, and the fallopian tube, as he later explained, "just to be on the safe side."

Sarah recovered quickly but her parents were furious with everyone when they found out what happened. Furthermore, believing that she was now "sterile," Sarah spent many months in counseling. Now, eleven months after the surgery, the K.'s and a considerably matured Sarah consult with you regarding a possible "suit." You tell them that this is very complex case and you will get back to them in a few days.

Create an outline of what you might tell them regarding possible legal action against each individual or entity mentioned. Also indicate what information you might wish to obtain from a medical expert. Finally, indicate the defenses the potential defendants might utilize.

***** HINTS *****

In answering this question, if you know of specific Ohio statutes that are relevant, you may apply them. You may also assume that while loss of both fallopian tubes ordinarily would result in a woman being unable to conceive, new procedures have changed that situation.

In creating your outline, the idea is to categorize your thoughts in relatively brief statements under headings, subheadings, *etc*. You may also use conditional statements ("if - then").

Example: [This is only an example of one of many ways of doing it]

Possible Defendant A

Possible Tort 1

Duty is to do this or that

Basis(es) of duty

Basis α

Basis **B**

Breached when xxx happened

Causation present?

Controlling statutes?

Possible damages [this is just an example of conditional statements and they don't necessarily have anything to do with damages but they could]

If this is so or this happened then

Damage a

Damage b ...

If that happened then ...

Medical information needed

Info i

Info ii ...

More things under Tort 1 ...

In this answer, consideration is not given to your eloquence, whether you use complete sentences, or how you style your outline headings; my main interests are in your logical organization and basic comprehension of medical liability law.

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