

TORTS
FALL SEMESTER, 1998
FINAL EXAMINATION

PROFESSOR STRASSER
DEC. 17, 1998
IN CLASS

INSTRUCTIONS

1. **THIS IS A THREE-HOUR (3-HOUR), OPEN-BOOK EXAM. YOU ARE WELCOME TO LOOK AT YOUR NOTES, YOUR OUTLINES, AND YOUR TEXT, BUT YOU ARE NOT PERMITTED TO MAKE USE OF ANY COMMERCIAL MATERIALS (EXCEPT AS NOTED ABOVE). FAILURE TO ABIDE BY THESE RULES IS AN HONOR CODE VIOLATION.**
2. **BEGIN EACH ANSWER IN A NEW BLUE BOOK. NUMBER EACH BLUE BOOK, INCLUDING THE NUMBER OF THAT BLUEBOOK AND A SECOND NUMBER CORRESPONDING TO THE TOTAL NUMBER OF BLUE BOOKS THAT YOU WILL USE FOR BOTH ANSWERS. FOR EXAMPLE, ON THE FIRST, WRITE #1 OF 3, ON THE SECOND, #2 OF 3, AND ON THE THIRD, #3 OF 3. YOU SHOULD BE ABLE TO DO THE ENTIRE EXAM USING ONLY TWO BLUE BOOKS BUT YOU ARE WELCOME TO USE MORE IF YOU SO DESIRE.**
3. The questions are of **EQUAL WEIGHT**.
4. **AMBIGUITIES:** If you find the facts given to be insufficient to answer a question, state any additional factual assumptions you deem necessary and answer the questions as though your assumptions were part of it. **DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANGING THE FACTS.**
5. **IDENTIFICATION:** Write your exam number on the **FRONT COVER OF EACH BLUE BOOK**.
6. Take time to organize your answers, which should be concise and to the point. **READ THE ENTIRE EXAM BEFORE BEGINNING YOUR ANSWER.** You should discuss **ALL RELEVANT ISSUES**, even if one issue might dispose of the case. This exam requires you to do **ISSUE-SPOTTING and ANALYSIS**.
7. **REPETITION.** When I grade these, I will look at Question One in **ALL** of the exams and then look at Question Two in **ALL** of the exams. Merely because you have said something in Question One does not mean that you will get credit for it in Question Two should the same point be relevant in both questions. **DO NOT CROSS-REFERENCE.** (I don't want my judgment of how you are doing in Question Two to be affected by my judgment of how well you did on Question One.)
8. **CITATION** When citing to a case we discussed in class, it will suffice to use the name of the case, e.g., the Pokora Court or the Palsgraf court.

9. If dates are offered in the questions below, they are just there to facilitate the sequencing of events.

10. You need not turn in the copy of the exam. You are welcome to frame, recycle, or otherwise dispose of it as you see fit.

11. WRITE LEGIBLY. IF I CANNOT UNDERSTAND WHAT IS WRITTEN, I CANNOT GIVE CREDIT FOR THE ANSWER.

QUESTION 1

On Oct. 10, Paul Passerby was walking along Main Street when, all of a sudden, a barrel which had fallen out of a window of the Main Street Warehouse, hit him in the head. When he regained consciousness fifteen minutes later, he found himself in the car of Stephanie Samaritan, who was taking him to the hospital. Paul's head was bleeding, his nose was protruding from his face at a 45 degree angle, and he had a splitting headache.

Stephanie, who had witnessed the whole incident, described what had happened. Paul was hit by a falling barrel. A few seconds later, another barrel fell out of the window, barely missing him when it landed on the sidewalk beside him. Stephanie, fearing that Paul was in great danger, hurried over to rescue him and, in her haste, fell on him, breaking his nose with her knee. She did not mention that her knee was now throbbing with pain.

Soon they arrived at the Emergency Room of the Capitania University State Hospital. Stephanie helped Paul enter the hospital. While they were talking to the individual at the Admissions Desk, Paul lost consciousness. He received immediate, life-saving care.

The next morning, the front page headline of the local newspaper, the Capitania Enquirer, read:

STEPHANIE SAMARITAN, AMATEUR TENNIS SENSATION, HERO

One of the stories explained how Stephanie had saved Paul's life. Another had explained that she would receive the Key to the City at noon that day. A third explained that she was ranked the number one amateur tennis player in the country and that she was expected to turn professional by the end of the year.

Stephanie will always remember that day that she had received the Key to the City. She was standing near a tower which held some very bright lights to make it possible for the ceremony to be telecast live. A few seconds after receiving the Key, those lights came crashing down on her.

The private detective hired by Stephanie's attorney has discovered the following:

The morning of Oct. 11, David Driver was driving his car when he suddenly had an epileptic seizure, notwithstanding his having taken his medicine as prescribed and notwithstanding his not having had any seizures in the past fifteen years. His car struck a utility pole, knocking it down across the street onto Vicki Victim's parked car. Fortunately, no one was in the car and no one was hurt, although the car was totaled. (**Note: Assume for purposes here that the law did not require drivers to have insurance and that neither Vicki nor David had any.**) Several minutes before Vicki's car was destroyed, the meter by which she was parked already indicated that her parking time had expired, i.e., more money had to be placed in the meter for her to be parked there legally.

A policeman at the scene issued a citation to David, because his registration tags had expired several months ago. No other citations were issued to David.

When the utility pole went down, all of the electricity in that part of the city was lost. Because there was no electricity, the traffic signals went out. Because the traffic signals were out, there was an accident near City Hall in which a car went into another utility pole. (**Ignore the potential liability and the possible causes of action of this last driver in your answer.**) That pole crashed into another pole, which crashed into the tower which held the high-powered lights for the TV crew. Those lights, which the news team had brought and set up with the utmost care, fell on Stephanie, who was fortunate to escape alive. Regrettably, she is now paralyzed and will never walk or play tennis again.

The City might have been able to prevent the accident by investing in traffic signals which automatically flash red when the electricity goes out. Because those traffic signals are more expensive than the standard ones which simply do nothing in the event that there is no electricity, the City decided to buy the standard signals, reasoning that the money would be better spent in the local schools.

Stephanie did not even get on T.V. Dan Baylor, the man doing the filming, had forgotten to take the cap off of the lens of the T.V. camera.

Several experts would be willing to testify that had the ceremony and the accompanying events been televised, Stephanie would very likely have been given local and state endorsement opportunities worth (on average) \$150,000 a year for at least five years. Had her tennis career progressed as everyone expected that it would, her championship earnings would have amounted to at least 2 million dollars and her endorsement opportunities would have been worth at least 5 million dollars.

Discuss all relevant issues. Capitania is a comparative negligence state in which the plaintiff will be awarded damages only if plaintiff's fault does not exceed the aggregation of the faults of the defendants. Capitania has abolished assumption of risk as a defense.

QUESTION II

It was mother and daughter day at the local amusement park, Wonderworld. Barbara Smith and her daughter, Carol, went to the park to try out The Monster, a new ride which not only involved the riders going at great speeds but also their being turned upside down for almost half of the ride.

Barbara and Carol watched as other people tried the ride. Many screamed. Some looked a little sick when they got off of the ride. Barbara decided that before going on The Monster, it might be nice to have a couple of Wonderworld's famous chili dogs. She ate two chili dogs and some onions rings while they waited in line.

Finally, it was their turn. They got on the ride and fastened their seat belts. The attendant closed the metal safety bar and tested the latch, as was the custom in all amusement parks for rides such as these. Everything was fine.

Barbara and Carol found that the ride was all that they had anticipated and more. Unfortunately, once they had finished the ride, Barbara found that she didn't feel very well--she decided that there would be no more rides for her that day. Carol, however, thought that the ride had been wonderful and wanted to try it again.

Barbara didn't want to allow her daughter to go on the ride alone. Nancy Neighbor, a divorcee who lived next door to Barbara, was there with her niece, Zinny. Nancy volunteered to take care of Carol, since Nancy and Zinny would be going on the ride anyway and all three of them could sit together on the ride. Barbara consented, having no reason to believe that Nancy would do anything other than had been promised.

While Nancy, Carol, and Zinny waited in line, Barbara quickly rushed to the women's room, where she lost her lunch, ruining her clothing in the process. Muttering to herself that Wonderworld should have warned her about the possibility that her lunch would be lost and clothing soiled, she swore to herself that she would sue.

Meanwhile, shortly before it was time to get on the ride, Nancy saw an old flame of hers from high school, Arnold. Nancy told the girls to go on the ride by themselves--she had heard that Arnold had recently divorced and she was interested in renewing their relationship. The girls went onto the ride.

As Barbara walked out of the women's room, she saw Carol and Zinny getting on The Monster without Nancy. She yelled that Carol should not go on the ride, but her voice was drowned out by all of the noise. Within a few seconds, the ride had started and Barbara could only wait and watch her daughter ride The Monster.

Zinny would later testify that she had seen Carol fasten her seat belt, although Zinny of course had not tested the belt to make sure that it was secure. In any event, when Zinny and Carol were upside down at the top of the ride, Carol somehow fell out of the seat, landing not far from where her mother was standing. Carol was rushed to the hospital in an ambulance, Barbara accompanying her.

When they arrived at the hospital, Barbara called her husband, Sam, who was at work. He immediately came to the hospital. They were with their daughter when she died.

On the way home, Sam stopped at a traffic light. He was somewhat dazed, given all that had happened that day, and he didn't step on the gas as soon as the traffic light had turned green. All of a sudden, Darla Dewars rammed into the back of their car. Darla had obviously had much too much to drink, since she was slurring her words and could not get out of her car. Darla had just gotten a big promotion at work and had been celebrating with Johnnie Walker in his home. Johnnie owns and operates The Jolly Roger, a local bar.

After each had had a few drinks, both Johnnie and Darla had realized that Darla was beginning to get drunk. Before offering her another drink, Johnnie had said that she could sleep on his couch and then drive home in the morning. Darla had been reluctant to continue drinking, but Johnnie had continued serving her, suggesting to her that he would be insulted if she didn't accept his hospitality. However, several drinks later, Johnnie received a telephone call from his ex-girlfriend, Lotharia, who wanted to see him that evening. He got very excited and insisted that Darla leave right away.

The damage to the Smith's car was worth about four thousand dollars, while the damage to Darla's car was only half that amount. Darla was fortunate--she suffered only a few facial cuts and bruises when her air bag was activated. **(For purposes here, assume that the auto maker, the auto dealer, and the air bag manufacturer are not liable for anything.)** The physical injuries sustained by the Smiths were also relatively minor--medical bills amounted to about one thousand dollars between the two of them. However, starting the night of the accident, Barbara had nightmares of cars chasing her. She began to believe that everyone was out to destroy her and her family.

The following occurred or was revealed at trial:

Doctors testified that Barbara was suffering from paranoid schizophrenia. She had always had a prepsychotic personality. However, the overt psychotic reaction was triggered by her (1) having witnessed her daughter's death, and (2) within 24 hours of that event, having been in the car when it was rammed by Darla Dewars. Barbara would have to be institutionalized for the rest of her life.

The seat in which the children had been sitting had a safety bar which was designed to prevent anyone from falling out of the seat. The Wonderland attendant had closed the safety bar, but had not made sure that it had been latched properly. The safety bar had opened when Carol had fallen against it. Subsequent testing of the seat belt and the safety bar indicated that they incorporated state-of-the-art technology and were not defective in any way.

As soon as Nancy and Arnold had seen each other, they had left the amusement park, having immediately fallen deeply in love. They went to parts unknown, leaving no forwarding address. Nancy has no known assets which might be used to pay a judgment.

Darla Dewars settled with the Smiths, paying them \$10,000.
Capesota Stat. Ann. Sec. 601.20 (1987) reads:

Every person who is injured within this State, in person or property, by any intoxicated person has a right of action in his or her own name, severally or jointly, against any person, licensed under the laws of this State or of any other state to sell alcoholic liquor, who, by selling or giving alcoholic liquor, within or without the territorial limits of this State, causes the intoxication of such person.

You have been asked by the judge to write a memo discussing all relevant legal issues. Capesota, the state in which all events took place, is a comparative negligence state in which plaintiff will be awarded damages only if plaintiff's fault does not exceed the aggregation of the faults of the defendants. Capesota follows the Uniform Act with respect to how settlements should be treated for purposes of determining the remaining defendants' liability. Capesota accepts Express Assumption of Risk as a complete defense, although it has abolished implied assumption of risk. When redistributing liability because of an absent or judgment-proof defendant, Capesota does not include the plaintiff in the reallocation. Capesota has abolished by statute the cause of action for loss of consortium, so that issue should not be addressed in the memo.