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Exam No. _____

**510-002 Torts
Fall Semester 2006**

**UNM School of Law
Final Examination
Three Credits**

**Professor LaVelle
Thursday, December 14, 2006
1:30-4:30 p.m. (3 hours)**

**Examination Format
Essay Answers**

1. **Laptop** computer users: Start the Secureexam program entering your examination number, course name, professor's name, & date of examination. Click "proceed" to enter the program. Type START in the next window that is displayed but do NOT press the enter key until the proctor says to begin the exam.

2. **Bluebooks** for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

A five-minute warning will be given prior to the conclusion of the examination. When time is called, stop immediately. If you are handwriting, lay down your pen & close bluebook immediately. If using a laptop, save & exit the program.

Go to the exam check-in table at the conclusion of the exam & fill out an examination receipt.

Professor's Instructions

1. This is an open-book and open-notes exam. You may refer to any materials you wish.
2. The exam consists of 2 essay questions on 5 pages, including this one. Essay #1 is worth 25% of your exam grade. Essay #2 is worth 75% of your exam grade and is divided into three parts, each of which is worth 25% of your exam grade.
3. I recommend that you spend 45 minutes on Essay #1 and 45 minutes on each of the three parts of Essay #2. Notwithstanding my recommendation, you are free to allocate your time as you wish.
4. Turn in the essay question, your answer, and any scratch paper at the conclusion of the exam.
5. **GOOD LUCK!**

ESSAY #1—25 POINTS
(RECOMMENDED TIME: 45 MINUTES)

Jane and Jim took their four-year-old son Joey to the office of Dr. Ann Davis for a “well child” visit. Dr. Davis examined Joey and found that he displayed no unusual or significant symptoms, suffered no health problems, and was in fact a “well child.”

At the end of the visit, Dr. Davis left the examining room, and shortly thereafter Dr. Davis’s nurse, Ben, entered the examining room along with Stan, a laboratory technician. As Ben was asking Jane and Jim a few routine questions and explaining when they would need to schedule the next “well child” visit for Joey, Stan administered a “finger poke” to Joey and drew blood for laboratory analysis. No one had explained to Jane and Jim that blood would be drawn during the visit, nor did anyone explain the purpose for drawing blood. Jane and Jim said nothing, though, and assumed this was another part of the “well child” visit.

The next day, Jane received a phone call from Ben. He alerted her to the results of the blood test on Joey, which showed that Joey had received “lethal” doses of the drug codeine. Codeine is a narcotic which is sometimes given to children suffering from pain caused by conditions such as ear infections. One of its side effects is drowsiness. Ben did not ask Jane whether Joey had displayed any unusual symptoms since the checkup, and in fact Joey appeared to his mother and father to be completely normal.

Ben insisted that Joey be brought immediately to Mercy General, a nearby hospital. When Jane, Jim, and Joey arrived at the hospital’s emergency room, a nurse there asked them many questions about the codeine in Joey’s blood, but the nurse did not examine Joey in any way. Jane, Jim, and Joey waited several hours to see a doctor, and in the meantime told several emergency room personnel that they wanted to take Joey to another hospital to be examined. Jane and Jim were told repeatedly that the police would be called and they would be arrested if they took Joey from the hospital.

Finally, a doctor examined Joey and found no evidence of codeine toxicity. After the exam, the Mercy General staff insisted that Joey be kept overnight for observation. Again several staff members told Jane and Jim that they would be arrested if they attempted to take Joey from the hospital.

Jane and Jim therefore spent the night in the hospital with Joey. The next morning, Dr. Mark Evans entered Joey’s room. He did not examine Joey, but instead sent him into an adjacent playroom. Dr. Evans then accused Jane and Jim of giving extremely high doses of codeine to Joey and of trying to kill him. Jane and Jim denied these accusations and were quite angry and hurt.

Later that same day, another doctor came into Joey’s room and informed Jane and Jim that the accusations had been based on a “lab error.” Only then were they allowed to leave Mercy General with their son.

Both Joey and his mother have had trouble sleeping since the incident, and all three members of the family are infuriated at the way they had been treated at the hospital. They have scheduled a meeting with the senior partner in your firm for later today to discuss possible legal action.

The senior partner has asked you to advise her of any potential intentional tort claims Jane, Jim, and Joey might have against any of the parties involved.

What intentional tort claims might your clients raise? How might the potential defendants respond to those claims? What results? Discuss fully all the arguable intentional torts and defenses. (25 points)

(NOTE: Do not discuss any issues of vicarious liability, as those issues have been assigned to another associate for analysis. In other words, do not concern yourself with the liability of any employer for an employee's actions. Concentrate only on whether any individuals would be liable for intentional torts.)

If you require additional information in order to address this problem more fully, indicate what facts you need to know, and how such information would affect your analysis.

ESSAY #2— 75 POINTS
(RECOMMENDED TIME: 2 HOURS 15 MINUTES)

Perry, the conductor of a world-class symphony orchestra, was riding as a passenger on a tour bus driven by Deb, a driver for Delta Charter Tours, a private corporation. Perry was seated on the right rear side of the bus. The day was warm, and the air conditioning system on the tour bus was not working, so Perry had opened the window next to him. The window ledge was shoulder-high to Perry, and he was resting his right arm on it, with his right elbow protruding beyond the outside of the ledge.

As Deb drove along Scenic Drive, heading toward the final scheduled stop of the tour, she recalled that she needed to pick up a box of chocolates for a staff Christmas party and potluck the next day. Deb announced to the passengers that she would be stopping momentarily to “run an errand,” and turned off from Scenic Drive onto Narrow Way, in order to buy a box of chocolates at Sweets Unlimited, a specialty shop located four blocks from the intersection of Scenic & Narrow.

After purchasing her chocolates, Deb pulled the bus away from the curb, swinging the bus toward the center lane and around a delivery truck that was parked in the curb lane of Narrow Way. The delivery truck was owned by Doe Bakery Goods; the driver of the truck, Dave, had stopped to use the restroom at Best Brew after delivering a tray of pastries to the specialty shop. As Deb swung the tour bus around the parked delivery truck, she drove so close to the truck that Perry’s elbow collided with the door on the end of the truck which was open and which in that position extended beyond the side of the truck. The collision severed an artery in Perry’s arm and shattered Perry’s elbow and adjoining bones, ligaments and tendons.

Perry pulled his mangled and bleeding arm into the tour bus and cried out in pain. Among the passengers on the tour bus that day was Dr. Ames, Perry and Pam’s own family physician. Pam pleaded with Dr. Ames to help Perry, but Dr. Ames remained silent in his seat at the front of the bus and did nothing. Another passenger on the bus was Dr. Bell, who had retired from medical practice thirty years earlier. Responding to Pam’s plea for help, and seeing the severity of Perry’s injuries, Dr. Bell removed a narrow belt from his trousers and used it as a tourniquet, strapping it around Perry’s arm just below the shoulder to stop the flow of blood to the elbow area.

Eventually, an ambulance arrived on the scene, and transported Perry to a hospital. As a result of the extensive trauma to his arm, including the application of a tourniquet, Perry has suffered permanent and disabling injuries, and may never be able to work as an orchestra conductor again.

The jurisdiction in which these events transpired is a modified comparative negligence regime. The legislature has adopted the doctrine of negligence per se and has *not* enacted a “Good Samaritan” statute. A provision of the State’s motor vehicle code reads as follows:

Sec. 77. Opening and Closing Vehicle Doors

No person shall open the door of a motor vehicle on the side available to moving traffic unless and until it is reasonably safe to do so, nor shall any person leave a door open upon the side of a vehicle available to moving traffic for a period of time longer than necessary to load or unload passengers.

Perry wants to sue Deb, Delta Charter Tours, Dave, Doe Bakery Goods, Dr. Ames, and Dr. Bell for negligently causing his injuries.

In view of what you have learned about negligence and its defenses, discuss fully Perry's contemplated actions against:

- A. Deb and Delta Charter Tours — *25 points (recommended time: 45 minutes)*
- B. Dave and Doe Bakery Goods — *25 points (recommended time: 45 minutes)*
- C. Dr. Ames and Dr. Bell — *25 points (recommended time: 45 minutes)*

REMINDER: Be sure to analyze each of the contemplated negligence actions FULLY, including all elements and all arguable defenses.

If you require additional information in order to address these problems more fully, indicate what facts you need to know, and how such information would affect your analysis.

~ THE END ~
