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Exam No. _____

510-001 Torts
Fall Semester 2006

UNM School of Law
Final Examination
Three Credits

Professor Montoya
Thursday, December 14, 2006
9:00 – 11:00 a.m. (2 hours)

Examination Format
Essay Answers

1. **Laptop** computer users: Start the Securexam 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. WRITE LEGIBLY. Your grade will depend on my being able to read your writing. I will not struggle to decipher your scribbles

2. You have two hours to complete the exam. The exam is worth 50% of your final grade.

3. You are to turn in your outlines at the beginning of the exam. This is a closed book exam.

4. As with all law school work, you are bound by the Honor Code.

Good luck. Don't forget to breathe deeply.

Part I

While Pat Wates was in the process of moving into his new house, he invited Anita Begay over to visit. Begay arrived between 5:00 and 5:30 p.m., and the two visited with one another while they cleaned and unpacked. At approximately 9:00 p.m., Begay exited the front door and slipped from the concrete steps onto the concrete porch, breaking a finger and her leg. An ambulance transported Begay to the hospital, and her leg was put in a cast. In taking the medical history, the ER doctor failed to ask about diabetes (which often affects the circulation in the legs, can lead to amputation, and is incurable). Begay has diabetes; her leg subsequently developed an abscess. She missed weeks of work and eventually lost her job. She continues to see a physical therapist.

Begay filed a complaint against Wates in the District Court, alleging that Wates was negligent in failing to warn her of the slippery steps, to provide sufficient lighting, and to reduce the slipperiness of the steps. The trial court granted Wates' motion for summary judgment, finding, as a matter of law, that Wates owed no duty to Begay. Begay has appealed.

Question #1 (25 points): How should the appellate court decide the case? Attached are excerpts from two opinions, one from the Supreme Court of Mississippi and another from the Supreme Court of Kansas.

Question #2 (15 points): Assume that plaintiff is successful in her appeal and her case eventually goes to trial, what is she likely to claim in damages?

Part II*

Question #3 (5 points): Two automobiles, negligently driven by A and B, collide. A car, negligently driven by C, piles into the wreck. The Plaintiff, a passenger in car A, is killed. Assume there is no other evidence. How should the judge instruct the jury about the liability of the defendants?

Question #4 (5 points): Families of some of the victims of September 11th attacks against the Twin Towers and the Pentagon have filed claims against the airlines. The defendants admitted that they owed a duty to their passengers but denied that they owed a duty to those on the ground. Were the victims in the Twin Towers or the Pentagon foreseeable plaintiffs? How would Judges Cardozo and Andrews rule?

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* Questions used with permission of Prof. K. Kelly from *Prosser, Wade and Schwartz's Torts*, 11th Ed., Foundation Press.

Little by Little v. Bell
719 So.2d 757, (Miss. 1998)

SMITH, Justice, for the Court:

¶ 1. Motion for rehearing is denied and these opinions are issued by the Court.
¶ 2. This case comes to this Court for the purpose of addressing whether the lower court's granting of a directed verdict on the grounds that Andrea Little was a licensee was correct. On November 19, 1990, Andrea Little's mother, Regenia W. Little, filed a Complaint in the Circuit Court of Alcorn County, Mississippi, as Andrea's mother and next friend, naming Larry and Karen Bell as Defendants. The Complaint alleged that on June 18, 1990, while a guest at the Bells' home, Andrea was allowed to play on the Bell's trampoline, and while either mounting or dismounting the trampoline, Andrea stepped on a milk crate located below the trampoline, resulting in a fall and concomitant injury. The Complaint further alleged that $9,318,84 in medical costs had been accumulated, and, *inter alia,* that Andrea had experienced loss of kindergarten attendance, pain and suffering, and disability. . . . .

¶ 24. Moreover, in addition to our own precedent, the majority of the States retain the common law distinctions between invitee and licensee. . . . . In recently rejecting the very proposition the Littles put before this Court today, the Missouri Supreme Court stated,

> The contours of the legal relationship that result[ ] from the possessor's invitation reflect a careful and patient effort by courts over time to balance the interests of persons injured by conditions of land against the interests of possessors of land to enjoy and employ their land for the purposes they wish. Moreover, and despite the exceptions courts have developed to the general rules, the maintenance of the distinction between licensee and invitee creates fairly predictable rules within which entrants and possessors can determine appropriate conduct and juries can assess liability. To abandon the careful work of generations for an amorphous "reasonable care under the circumstances" standard seems--to put it kindly--improvident.

Carter v. Kinney, 896 S.W.2d 926, 930 (Mo.1995). We agree with the Missouri court.
¶ 25. Accordingly, the trial court's granting of the directed verdict in favor of the defendants is affirmed. . . . ¶ 30. **JUDGMENT AFFIRMED**

Jones v. Hansen
254 Kan. 499, 867 P.2d 303 (Kan., 1994)

DAVIS, Justice:
This is a premises liability action. Plaintiff, while a social guest in the home of the defendants, fell down a flight of stairs, severely injuring herself. She appeals from a summary judgment entered in favor of the defendants. . . . .The question presented is whether this court should change Kansas law regarding the duty owed by an occupier of land to a social guest licensee by adopting a standard of reasonable care under all the circumstances. Under present Kansas law, the duty owed to an entrant upon property is dependent upon the status of the entrant. A majority of this court believes that a partial change in our premises liability law is warranted as more reflective of modern social mores and as a more reasonable method of fault determination in our society. . . . We hold that in Kansas, the duty owed by an occupier of land to licensees shall no longer be dependent upon the status of the entrant on the land; the common-law classification and duty arising from the classification of licensees shall no longer be applied. The duty owed by an occupier of land to invitees and licensees alike is one of reasonable care under all the circumstances.. . . .

Justice MacFarland, dissenting:

. . . . "In conclusion we wish to acknowledge what has been referred to as a trend in this country toward abolition of the traditional classifications. Apparently the bellwether case in the United States was handed down in 1968, *Rowland v. Christian,* 69 Cal.2d 108, 70 Cal.Rptr. 97, 443 P.2d 561 [1968]. Our research indicates that in the ten years which have elapsed since *Rowland* only nine states have followed the lead. During this same period of time several states have elevated licensees to a common class with invitees, and five states have placed social guests in the category of invitees. During this same period of time a large majority of states have continued to follow the traditional common law classifications. At least six states have considered the advisability of following *Rowland v. Christian,* supra, and have declined to do so. The jurisdictions which have abolished all classifications are not sufficient in number to constitute a clear trend." . . . .

. . . . The majority opinion herein is clearly not following any modern trend. It is, in fact, not only turning its back on our well-established law but also is swimming against the stream of current opinion in other states on this issue. . . . .

The classifications have been developed over many years and are grounded in reality. In the real world there are enormous differences between businesses and residences. . . . . I would adhere to our existing law and affirm the district court.