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**510-003 Torts
Fall Semester 2006**

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

**Professors C. Suzuki
Thursday, December 14, 2006
1:30-4:30 a.m. (3 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

This exam consists of two essay questions. It is recommended that you spend 90 minutes on the first question and 90 minutes on the second question. Point values for the examination will be apportioned roughly equal to the recommended time allotments.

Limited open book and materials. You may bring only the course book, class handouts, tutor's notes, printouts of electronic reading assignments and notes that you have prepared.

If there are any ambiguities as to law or fact, please state what you would need to know and your reasonable assumptions and proceed with your analysis.

You may cite relevant case law of jurisdictions outside of the jurisdiction in which the question is set.

You will be evaluated in the thoroughness of your answers. The conclusions you reach are less important than the strength of your analysis.

If you use bluebooks, please use a separate bluebook for each question. Some questions have subparts. Different subparts of the same question can be answered in the same bluebook. Use as many bluebooks as you need to answer a question.

If you type, please start each question at the top of a page. To start a new page in SecurExam, use the same method as in Word (Ctrl + Enter).

Examination

Question 1 (recommended time: 90 minutes):

On December 14, 2006, Polly Pacher, a 22-year-old paralegal, visits your law office and asks you to represent her in a lawsuit because she was injured at a bar on July 8, 2006, and later had surgery due to the injury. Polly relates to you the following story:

“So I went with some friends to Dapper Diego’s Cantina around 10:30 at night to celebrate a friend’s birthday. That night, the bar was holding its weekly ‘Shake It Like Shakira’ contest, sponsored by Jose’s Marvelous Tequila. The grand prize is \$250. You probably don’t listen to pop music, since you lawyers always listen to opera, like the lawyers in the office where I work. Where I used to work. Anyway, Shakira is a Colombian-Lebanese singer who had this great song on the radio in the summer and she’s a great dancer. This contest was to see who was the best dancer at the bar. The contestants actually step up onto the bar and dance on top of the bar. I had been to the bar a few weeks earlier and saw the contest, and I think I was as good as they had been. It sure got rowdy when I was there before, watching the contest. People were shouting the lyrics to the song. One girl kicked up her leg funny and probably would have fallen off of the top of the bar if a bouncer, one of the bar’s security guys, wasn’t there to steady her.

“I had had a margarita and just started drinking a rum and cola when I decided to join the contest. I wasn’t drunk or anything, although some of the other dancers probably were.

“I paid the \$35 entry fee for the contest. They had me sign this piece of paper and write down my e-mail address. At the top of the paper it said something like, ‘I waive liability for injuries caused by other patrons. I allow Dapper Diego’s Cantina and Jose’s Marvelous Tequila to use photos of me dancing in the “Shake It Like Shakira” contest to publicize the bar.’ Since the contest was sponsored by Jose’s Marvelous Tequila, they had me drink a shot of tequila when I signed up. There’s a poster on the wall of Dapper Diego’s Cantina with photographs of the past contest winners, under a huge neon sign of the Jose’s Marvelous Tequila logo.

“So I and about eight to ten other women were dancing on top of the bar, and all the time, the bartenders continued serving drinks and serving patrons standing at the bar. People were getting really rowdy. It was a little crowded on the bar; we

contestants were jostling each other a little. Some guy grabbed my leg, but I kicked him off.

“So I was having fun dancing, being totally into the groove. One song ended, and a new song started up. All of a sudden, I slipped. I’m sure it was because the bar area was wet, unprotected and unsafe. From what I remember, no one was touching me at the time, and no one bumped into me to cause me to fall. I lost my balance and fell off the bar and onto the floor. The floor was wet and sticky. I was totally grossed out and embarrassed.

“After I fell, the Dapper Diego’s Cantina staff weren’t exactly helpful. I was crying out in agony and the staff basically told me that I couldn’t stay where I was. The contest continued, but I was in so much pain that my friends and I had to leave. I went for medical help the next day at the Freedonia State Hospital, where I was told that my knee was seriously injured. I had torn a ligament in my knee. I had to get reconstructive surgery. I would have been out of work for less than a week, but while I was in recovery at the hospital, I must have picked up a staph infection. You know, bacteria that are usually harmless, but attack people when their immunities are low and they have open cuts. Thank goodness it wasn’t flesh-eating bacteria. I hear a lot of people get staph infections in hospitals nowadays. So I had to take stronger antibiotics than I would have without the infection. I also got a prescription for pain killers. I didn’t take either of them regularly because they made me feel nauseated. I had to walk around in crutches, and then I had to get a cane and use that for awhile. I filed an insurance claim for the medical bills. Because of the infection, I was out of work for six weeks, but I got paid for the time I was out by using up all the ‘paid sick leave’ I had saved up. Then I was laid off, fired really. The law firm had hired someone to do my job. They could only find someone willing to work if it were a permanent job, not a temporary one.

“You would think that since I paid an entry fee for the ‘Shake It Like Shakira’ contest, Dapper Diego’s Cantina could keep the bar area clean and safe or at least say to me that I could get hurt or something. I hear that the bar no longer has the contest. So will you represent me?”

Assume all parties reside in and events occurred in the state of Freedonia, USA. The state of Freedonia, the fifty-first state, has not yet developed much common law. The Freedonia Supreme Court has announced that on each newly considered issue the State will adopt the best rule among those currently used by other states. Assume that Polly Pacher correctly related to you the language of the form she signed before the contest.

Analyze a negligence claim brought by Polly Pacher. Although there might be a claim against Freedonia state, and Freedonia State Hospital and its employees, do not analyze a tort claim against those entities or persons. Consider all elements of a negligence claim. Discuss what proof you will need, what experts you might need, where you foresee problems in proving the case. Evaluate any defenses or immunities that defendant(s) might raise. Would you represent Polly Pacher? Why or why not?

Question 2 (recommended time: 90 minutes)

The following events occurred in, and the individuals named are residents of, the state of Freedonia, USA. Dale Danzig and Dolly Driver's relationship ended with both people very angry with each other. Two months after their breakup, Dale called Dolly on her cell phone. Dolly answered and asked Dale to call her back in an hour because she was in the midst of driving her car home and wanted to concentrate on her driving. In response, Dale screamed into the cell phone that he was holding onto a voodoo doll that represented Dolly. He screamed to Dolly that he was going to poke pins in the voodoo doll and thus put a curse on Dolly, knowing that Dolly believes in voodoo. Dolly pleaded with Dale not to poke the doll with pins, started to cry, and, in an effort to pull over to the side of the road so as to not hit another car due to her stress, Dolly's car jumped the curb and onto the sidewalk, where it hit Midori Biko, a 34-year-old investment banker out for a stroll with her husband, Hidalgo Huron. Hidalgo was unhurt, but Midori was not so lucky. Midori was knocked unconscious. X-rays taken at the hospital showed that she had broken both arms, both legs and several ribs, and she sustained numerous injuries to various organs. Midori survived on a respirator for 30 days but never regained consciousness. On the thirtieth day after the accident, Midori had an aneurysm and died.

Nine months after the accident, Hidalgo Huron walks into your law offices. He says that every day since the accident, all he can do is rerun the image in his mind of Midori being struck by the car as she was walking right next to him. Despite his apparent trauma due to the event, Hidalgo has not seen any mental health professional for treatment. He cries, "Why couldn't it have been me?" Because of his difficulty concentrating after the accident, Hidalgo says he is in danger of losing his job as an insurance underwriter. Hidalgo tells you, "I didn't want to come here to your office. I want to forgive and forget, but I cannot forget when the memories of the event keep running through my brain. Someone should pay for

what happened.” Hidalgo is executor and personal representative of Midori’s estate.

You may consider the following statutes:

- Freedonia’s survival statute: “All causes of action by a person or persons against another person or persons shall survive to the personal representatives of the former and against the personal representatives of the latter. No action for a personal injury to any person occasioning death shall abate by reason of such death, if such person has a surviving spouse or child living. A personal representative of a decedent has the authority to bring a cause of action for a decedent’s personal injuries, and then only if the injuries were the cause of death.”
- Freedonia’s wrongful death statute: “When the death of a person is caused by the wrongful act, neglect or default of another his personal representative may maintain an action for damage against the person causing the death; and although the death shall have been caused under such circumstances as amount, in law, to a felony. Every such action shall be for the benefit of the wife, husband, child or children, including stepchildren, of the person whose death shall have been so caused. If there be no wife or husband or such child or children, such action may be maintained for the benefit of the parents, sisters or brothers, who may be dependent upon the deceased person for support, and who are resident within the United States at the time of his death.”

Analyze all tort claims against Dale Danzig and Dolly Driver that Hidalgo Huron has in any of his capacities. Evaluate any defenses or immunities that Dale Danzig or Dolly Driver might raise. The state of Freedonia, the fifty-first state, has not yet developed much common law. The Freedonia Supreme Court has announced that on each newly considered issue the State will adopt the best rule among those currently used by other states.