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SAMPLE FINAL EXAM -- NOTE: THIS SAMPLE EXAM CONTAINS EXACTLY THE SAME INSTRUCTIONS THAT YOU WILL SEE ON THE FINAL EXAM. THE QUESTIONS ARE DIFFERENT, OF COURSE, BUT THEY ARE SIMILAR TO THE KINDS OF QUESTIONS YOU WILL SEE ON THE FINAL EXAM.

## INSTRUCTIONS

This final examination consists of two questions, which you must complete within two hours. The first question is worth 50 points; you should spend about 80 minutes working on it. The second question is worth 25 points; you should spend about 40 minutes on it. This is a closed book examination; you may not have any notes or outlines with you.

There is ample time to organize, outline, and carefully structure these answers. Please read each question carefully before you begin writing. You will be given ample credit for good organization, careful writing and creativity. If you write in a Blue Book, please write on only one side of each page. Your name should not appear anywhere in your Blue Book or in the text of your Securexam answer.

Good luck, and have fun.

## QUESTION I

Arnold Putz owns Putz's Grand Reptilium in Las Cruces, New Mexico. Among the prize specimens he shows to the public (for a fee) is "Waldo, the world's largest and most ferocious Komodo Dragon," which, he insists in his advertising, "could eat goats, sheep, and even children." Putz has installed an electric fence system that allows his patrons to approach the animals without being separated by a fence, but which provides the reptiles with an increasingly severe shock as they get near a barrier line he has drawn under ground. His patrons are warned not to get too close to the line, either, because "trespassers will be eaten by the local inhabitants." Except for the electric barrier system, Putz does not provide his patrons with any protection from the animals.

One evening last June there was an electricity outage for long enough for Waldo to wander off the property and onto the street. When Putz realized that Waldo was missing, he immediately called the local animal control office – an agency of Las Cruces County – because under County Ordinance they have the responsibility to "protect the community from wild or otherwise dangerous animals." Given the ferocious nature of the beast in question (and their lack of knowledge with regard to Komodo Dragons), they regretfully declined to join the hunt but gave Putz a citation for violating another County Ordinance which made it illegal to have an unrestrained pet animal in public.

By the following morning, Waldo's disappearance was in the newspaper and on all of the television news shows. Billy Busybody, a ten year old boy, heard the rather sensational television news story about the missing Komodo Dragon and told his mother that he thought that he saw Waldo out the window in their apartment complex. His mother called Putz and the police, and word got out to the local media. All of the media descended on the apartment complex, and, with the confusion that ensued, the lead story on the local television news that night was that a small child's mother had called the police to report that Waldo had eaten her son, and that the Komodo Dragon was still on the loose at the apartment complex. There was a call for volunteers to save the complex and the city for any more attacks on children. At first tens – then hundreds, and ultimately, thousands—of Las Crucians appeared at the complex to help hunt down the Komodo Dragon. By nightfall the crowd of volunteer Komodo Dragon hunters spilled out across the street in front of the complex. A driver coming down the unlit street didn't see the hunter volunteers in the middle of the street until too late, and, although he swerved to miss them at the last minute, he ran into one crowd member, Harry Hunter. The driver left the scene immediately and was never identified. Waldo turned up back at the Reptilarium the next morning.

Hunter has now commenced an action against Putz and the animal control officer. Please evaluate his chance of success against each.

## QUESTION 2

Please explain why you agree or disagree with the following:

New Mexico negligence law is simply mixed up. It mandates the use of the principle of foreseeability when it makes no sense to do so, and it avoids consideration of foreseeability where it makes sense to do so. There is no consistent rule that describes which issues are to be decided by courts, and which are to be decided by juries. Sometimes duty seems to be defined in terms of proximate cause, and sometimes proximate cause seems to be defined in terms of duty. In an effort to make sure that no individual defendant will be liable for more than his fair share of a judgment, the court has all but assured that many innocent plaintiffs will be deprived of their fair recovery of all of their damages. Finally, the role of the judge and the role of the jury remains undefined, to be invented by trial judges on a case by case basis. It is time for a new approach to negligence law – we should throw out the precedent (and the UJIs) we now apply and start from scratch.