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**510-002 Torts  
Fall Semester 2004**

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

**Professor Montoya  
Thursday, December 16, 2004  
1:30 – 3:30 p.m. (2 hours)**

**Examination Format**

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. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

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

**PROFESSOR'S INSTRUCTIONS**

**This is a two-hour exam and will be worth 45% of your final grade. This is a closed-book exam.**

1. All violations of the Honor Code will be treated seriously.
2. Please do not use pencil. Write legibly. (I will NOT struggle to read undecipherable answers.)
3. Once I have determined that everyone has taken the exam, I will email you the citations for the cases on which the exam questions are based. The opinions will give you some quick feedback.

TAKE A DEEP BREATH.

GOOD LUCK.

### **QUESTION #1 (20 points)**

Elena Padilla was injured when she tripped over a concrete tire stop in the parking lot of the Abundant Life Fellowship church. She was at the church to attend an evening Bible study session. Padilla filed suit claiming that the church was negligent for failing to properly light the parking lot and failing to mark or properly position the concrete tire stops.

At trial the plaintiff requested a jury instruction based on the Restatement of Torts, 2d, §332. (See attachment.) The trial court judge concluded that the plaintiff was neither a “public invitee” nor a “business visitor” and so instructed the jury. The jury returned a verdict in favor of the defendant. On appeal, the Court of Appeals noted that, while the Supreme Court had never explicitly adopted this section of the Restatement, the Court cited this section favorably in several recent cases. The Court of Appeals overturned the jury’s verdict. The defendants have now appealed to the Supreme Court.

Assume that you are a clerk to a conservative Justice of the Supreme Court who has been elected after a campaign promising “tort reform.” You have been asked to brief the issues for the Justice in preparation for oral argument. You are to identify the legal issues, sketch the arguments and counterarguments that are likely to be made by the parties and discuss the policy dimensions of the issues.

### **QUESTION #2 (5 points)**

Now assume that a similar accident to that described in Q#1 has occurred on the Navajo reservation. Mary Sally, an enrolled member of the Navajo Nation, has tripped over the concrete tire stops in the parking lot at a church (that is neither owned nor controlled by the Navajo nation) while attending Bible studies. She sues the church and, in subsequent appeals, the plaintiff argues to the Navajo Supreme Court that it should adopt §332 of the Restatement of Torts, 2d.

You are a clerk to the Supreme Court. Are there different doctrinal considerations and policy implications for this Court? Briefly explain your answer.

### **QUESTION #3 (20 points)**

An automobile accident occurred at the intersection of Booth Street and 66th Avenue in Queens. At trial, the plaintiff, Krishna Dalal, testified that he stopped at the stop sign controlling traffic on 66th Avenue, and looked both ways for a distance of about one block, without seeing anything, before he proceeded into the intersection. When he was about halfway through the intersection, his vehicle was struck on the driver's side by a vehicle operated by Alicia Ramdhani-Mack (the defendant). The plaintiff further testified that he never saw the defendant's car until impact.

The defendant testified that she was about 10 to 15 feet away from the intersection when she noticed the plaintiff's vehicle, which was about 14 feet behind the stop sign but moving, and that about 5 to 7 seconds elapsed from the time that she observed the plaintiff's vehicle until the collision. She stated that she attempted to swerve out of the way, but could not avoid the collision. The defendant further testified that although she was nearsighted and required prescription glasses, she was not wearing her glasses at the time of the accident. She claimed she was still able to see while driving. There was no evidence that either driver was speeding

The plaintiff moved for summary judgment contending that the defendant's violation of Vehicle and Traffic Law § 509(3) was negligence per se. (See attachment.) The defendant testified at her examination before trial that her New York State driver's license contained a restriction requiring her to wear corrective lenses while driving.

How should the trial court rule on this motion? Explain your answer.

## **ATTACHMENT**

### **RESTATEMENT OF TORTS, 2D**

#### **§ 332. Invitee Defined**

(1) An invitee is either a public invitee or a business visitor.

(2) A public invitee is a person who is invited to enter or remain on land as a member of the public for a purpose for which the land is held open to the public.

(3) A business visitor is a person who is invited to enter or remain on land for a purpose directly or indirectly connected with business dealings with the possessor of the land.

### **McKinney's Vehicle and Traffic Law § 509**

#### **§ 509. Violations**

1. Except while operating a motor vehicle during the course of a road test conducted pursuant to the provisions of this article, no person shall operate or drive a motor vehicle upon a public highway of this state or upon any sidewalk or to or from any lot adjacent to a public garage, supermarket, shopping center or car washing establishment or to or from or into a public garage or car washing establishment unless he is duly licensed pursuant to the provisions of this chapter.

2. Whenever a license is required to operate a motor vehicle, no person shall operate a motor vehicle unless he is the holder of a class of license which is valid for the operation of such vehicle.

3. Whenever a license is required to operate a motor vehicle, no person shall operate any motor vehicle in violation of any restriction contained on his license.