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Exam No. \_\_\_\_\_

**510 TORTS  
Fall Semester 2005**

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

**Professor Occhialino  
Friday, December 16, 2005  
1:30 – 4:00 p.m. (2.5 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, 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 a closed-book examination. Bring no materials into the exam.
2. PLEASE, if you write your answer:
  - Write with a pen
  - Write on only one side of each page
  - Write only on every other line
  - Write as neatly as possible under the circumstances

## Examination Question

Marla Jones was a 26 year old law student at the University of Numek, which is located at Rio City, Numek. She was married to Glen Jones, a lawyer practicing in Rio City.

On Thursday night, November 20, Glen called Marla at home at 9:45 p.m. to tell her that he was working on a brief and would be home late. Marla told Glen that she was about to watch the 10:00 p.m. evening news on television and then maybe the Jay Leno Tonight Show and would see him in the morning. When Glen returned home at 2:00 a.m., Marla was asleep. She left a note for Glen. The note read:

“TV weather forecaster says weather will be really wonderful tomorrow. I’m going to skip school and go hiking in the Sandy Mountains. See you at about 5:30 p.m.”

Indeed, each of the weather forecasters on the four Rio City TV stations that broadcast a 10:00 p.m. news show had forecast really wonderful weather for hiking.

The stations are:

- ABC, Inc. which averages a 20% audience share watching the news at 10:00 p.m.
- NBC, Inc. which averages a 30% audience share watching the news at 10:00 p.m.
- CBS, Inc. which averages a 40% audience share watching the news at 10:00 p.m.
- KSA, Inc. which averages a 5% audience share watching the news at 10:00 p.m.

The Jones’ family has neither cable nor satellite nor dish television, and there are only five stations that Jones gets on her television. The fifth station draws 5% of the audience at 10:00 p.m. to its showing of reruns of MASH.

Specifically, the weather forecasters each reported that “In Rio City and surrounding areas, Friday will be sunny and warm, high in the mid-fifties with only a 2 percent chance of light precipitation.”

It was not surprising that the forecast on each station was the same because each station subscribes to the federal government’s Weather Bureau Service (Bureau). The Bureau provides subscribers with all the raw data for proper weather forecasting and also provides the professional assessment of the Bureau’s employees as to the weather forecast in each discrete community in the country.

Although each of the four Rio City stations with news shows states that it has a “trained meteorologist” as a weather forecaster, that is not quite true. ABC, Inc. is going through financial difficulties and it recently hired a young, totally inexperienced and untrained but very telegenic young man to report the weather on television. The station told the new hire that he should not bother to evaluate the raw data received from the Bureau, but merely to quote data from the Bureau and to read verbatim the Bureau’s forecast.

This is not unusual. With only a few exceptions, in every city and television market of a size similar to Rio City, the local television weather forecasters do not independently assess the raw data and the forecast that they receive from the Bureau. Instead, they merely use the raw data as background and visual images for their show and read verbatim the forecast that is supplied to them by the Weather Bureau. Locally, the one station that does independent evaluation is KSA, Inc. Unfortunately, on the night of November 20, KSA meteorologist James Ksay was not feeling well when it came time to evaluate the raw data from the Bureau. Ksay is now 75 years old, has been suffering from early symptoms of Alzheimer's disease and is suffering from short term memory loss. He thought that he had done the evaluation of the raw data that evening and he also thought he independently wrote the forecast that he read. He did not in fact evaluate the data nor did he make an independent assessment of the forecast. Instead, he read on the air the forecast supplied by the Bureau.

Unfortunately, though the Bureau's raw data was correct, the Bureau's compiler-typist inadvertently sent the wrong forecast to the four subscribing stations in Rio City, Numek. Instead of sending the Rio City forecast, the compiler-typist sent the Reno City, Florida forecast to the four stations in Rio City.

The actual forecast for Rio City, Numek for November 21 was: "Rapidly moving storm center moving in by mid-morning. Sudden drop in temperature into the teens and 100% chance of significant accumulations of snow in the Sandy Mountains."

On the 10:00 p.m. news on November 20 all four Rio City weather persons used the correct raw data but also used the forecast for Reno City, Florida that the Bureau sent to them. Careful, trained meteorologists would have recognized the discrepancy if they did an independent evaluation.

On Friday morning, as 7:00 a.m., Marla left for the Sandy Mountains. She wore tennis sneakers, jeans, a shirt, a sweater and a light jacket, attire that would have been appropriate for the weather that had been forecast on the news shows.

When she was well into her hike, the temperature dropped, the snow began to fall and Marla was caught in the mountains without shelter, adequate clothing or food.

Glen awoke at 10:15 a.m., read the note from Marla and retired to his study to prepare for a deposition. He did not notice the gathering clouds or the sudden drop in temperature. When he left the house at 11:45 a.m. he realized it was snowing in the Sandy Mountains and in Rio City. He turned on the radio, heard the correct forecast and immediately called and reported his wife's peril to the County Sheriff's Department, which has jurisdiction on the Sandy Mountains.

The Sheriff's Department dispatcher informed Glen that all available personnel were responding to auto accidents and downed power lines that had resulted from the snow storm and stated that the department lacked personnel to begin an immediate search for Marla. The dispatcher suggested that Glen call Mike Montana, president of Sandy Volunteer Rescue Squad, Inc., a non-governmental, not-for-profit corporation made up of volunteers skilled in mountain rescues.

Glen did so but Montana said that neither he nor his organization were performing any more rescues because the United Fund had cut off their funding last week and the organization, as a protest against the funding cuts, was declining to conduct rescues until funding was restored.

Glen put on warm snow gear and boots and rushed outdoors to get into his car to go to the Sandy Mountains to search for Marla. As he reached his car, he slipped in the snow, fell, and broke his leg. A passing motorist took him to the hospital.

At 3:15 p.m., a single deputy sheriff was dispatched to look for Marla. At 4:30, the deputy sheriff was able to spot Marla high up the mountain.

The deputy reported the discovery by phone to the sheriff. The sheriff called Robert O. Enderson, a wealthy Numek oil executive, and asked if Enderson would lend his private helicopter and pilot to the effort to rescue Marla. Enderson agreed. The helicopter, pilot Patricia Pilot, and Enderson's physician, Dr. Dennis (who volunteered to go along to provide emergency medical care to Marla), were in the air by 5:30 p.m. At 7:00 p.m. Patricia Pilot radioed the sheriff that she had spotted Marla, landed the helicopter, picked up Marla and was on the way to Numek General Hospital. Patricia radioed the hospital to tell them to prepare for their arrival and told the hospital emergency personnel that Doctor Dennis had examined Marla and stated that she had only a 50/50 chance to survive even if she received care soon.

Twenty seconds after this communication, the helicopter fell from the sky without further communication with the ground and all aboard were killed in the crash. The Federal Aviation Administration could determine no reason for the crash, though its report did note that the area where the crash occurred was also the site of the crash three months ago of a TV station's helicopter which had been shot down by bullets fired by an unknown person who was never apprehended.

### Memorandum

To: Sam Student  
From: Pat Partner  
Re: Our Client, Glen Jones

We have been hired to represent Glen Jones in his attempt to obtain compensation from tortfeasors for the wrongful death of his wife Marla and for his broken leg. Other Students and Associates are working on many aspects of this case, but I want you to assist us in resolving some matters that you have expertise in because of your recent study of negligence law at Numek Law School.

Please answer each of the following questions relating to the law of negligence, stating the relevant law, the likely result and explaining fully the reasons for your conclusions.

As you know, Numek has adopted pure comparative negligence between plaintiff and defendants. In addition, Numek has adopted, in general, the doctrine of several liability among

concurrent tortfeasors. Numek has waived sovereign immunity for the torts of the Sheriff's Department. But the United States and the Weather Bureau are immune from liability because the Federal Tort Claims Act has not waived sovereign immunity for the conduct of the Bureau.

Other than these matters, Numek law of negligence is common law and there are no binding precedents because Numek was granted statehood only recently. Therefore, feel free to apply common law principles to all aspects of this matter other than those mentioned above. If there are differing common law rules, explain the differences, and apply the law you believe to be the most sound, explaining your reasoning fully.

### **Question One**

A) In a negligence action for damages for Glen's broken leg, did the four television channels owe a duty of care to Glen?

B) In a negligence action for Marla's wrongful death, did Mike Montana and Sandy Volunteer Rescue Squad, Inc. owe a duty to Marla?

### **Question Two**

A) Assuming that James Ksay owed a duty to Marla, is it likely that Ksay breached the duty when Ksay read the Reno City, Florida weather report on the air during the 10:00 p.m. news on November 20?

B) Assuming that the four TV stations owed a duty to Marla, how can we demonstrate that the three TV stations that allowed their weather forecasters to merely use the raw data provided by the Bureau for background, and allowed them to read verbatim the bureau reports, breached their duty of care?

C) Assuming that Enderson, as the owner of the helicopter and the employer of Patricia Pilot, owed a duty of care toward Marla, can we demonstrate that Enderson breached that duty of care because of the helicopter crash?

### **Question Three**

Assuming that the four TV stations owed a duty to Marla and breached that duty, and that we sue the four of them in a single lawsuit:

A) Will the four stations each be able to obtain a directed verdict (judgment as a matter of law) at the close of our evidence on the basis of lack of proof of causation in fact?

B) Will the four stations each be able to obtain a directed verdict (judgment as a matter of law) at the close of the evidence on the basis of lack of proximate cause or intervening superseding cause, assuming that they did not obtain a directed verdict for lack of proof of causation in fact?

C) If no directed verdict is granted and the jury finds each of the four stations liable, how will their liability be distributed among themselves?

**Question Four**

A) Assuming that Enderson owed and breached a duty to Marla, will Enderson be liable for the wrongful death of Marla? If not, will Enderson be liable for any injury to Marla other than wrongful death?

B) We would prefer to hold the wealthy Enderson fully liable for the death of Marla. Assuming that Enderson is liable for the wrongful death of Marla, is there any way that we can prevent Enderson from laying off fault on the four TV stations and the Sheriff's Department for the death of Marla, assuming that the stations and the Sheriff's Department owed and breached a duty to Marla and were a cause of her death?

**End of Examination for Those Who Are Not Taking the Optional Final Exam Question**