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**510-003 Torts  
Fall Semester 2007**

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

**Professor Suzuki  
Thursday, Dec. 13, 2007  
9:00 a.m. – 12:00 p.m. (3 hrs.)**

**Examination Format  
Essay and Short 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**

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**University of New Mexico School of Law**  
**TORTS-Course # 510-003**  
**Fall 2007**  
**Professor Carol Suzuki**  
**Final Examination**

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.

Honor code: Students are governed by the law school's Student Code of Conduct.

Limited open book and materials. You may bring only the course book, class handouts, tutor's notes 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. The questions may 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 typing your exam, start each question at the top of a page (control enter for a page break). Subparts to a question do not require a new page.

## Question One

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.

Chico Trentino was a fit 29-year-old U.S. Air Force veteran and security guard from Freedonia who decided to attend a wilderness survival camp because he saw it as a character-forming experience and a chance to experience the wilderness to the fullest. He paid \$3,175 for the 28-day course. Wilderness survival camp emphasizes personal growth through adversity and using one's wits to survive. Campers are equipped with a knife, water cup, blanket and poncho and are told they could lose 20 pounds or more while trekking through the mountains and desert of Freedonia, located in the mid-western United States.

Chico's trek was run by the Freedonia Outdoor Survival School (FOSS), whose courses are licensed by the U.S. Forest Service. The U.S. Forest Service owns the land and grants FOSS a permit to operate there. But there appears to be little if any state or federal oversight of courses for adults.

Chico's trek consisted of 12 paying campers, considered "guests," who were assisted by three instructors with experience in wilderness survival skills, cardio-pulmonary resuscitation (CPR) and first aid. Their task for the second day of camping was to hike through the oppressive heat only drinking where they found water. At 7 p.m., almost ten hours after the group had set off from its first-night's camp site, the group finally located water. Some campers found a cave with a pool of water about 100 yards away from Chico, who was ill and laying down on his stomach in the 100 degree heat. By that point, Chico and another member of the group were suffering from the effects of advanced dehydration. According to a doctor's report from an examination after he was rescued, Chico suffered from "heatstroke, dehydration and electrolyte imbalance due to hiking in hot environmental temperatures with inadequate heat regulation, water and electrolyte replacement."

The cave was known to the instructors as a reliable source of water. When the cave with water was discovered by the guests, Chico requested that one instructor who was sitting next to him, Mark, get water for him, but the instructor said he would not leave Chico and that they would rest for awhile. Chico managed to say,

“I pay you to serve me water when I ask, you jerk!” The instructor, Mark, replied, “I do not think you are in a position to complain.”

A second instructor, Rufus, approached Mark and the prone Chico. When Chico did not respond to Rufus, who was calling his name, Mark ran to get help. Mark was able to get telephone reception standing on a nearby hill. After calling for rescue assistance, Mark called Chico’s wife, Pinky Trentino. Although Mark could see that two instructors were attempting to resuscitate Chico, he informed her that Chico was dead, adding, “He just wasn’t strong enough for the trek.” When a rescue helicopter arrived an hour and a half later, Chico was comatose. He was airlifted to the nearest medical facility. After he came out of the coma, the doctors told Pinky that they thought that Chico would survive, but that he might have permanent brain injury and seizures. A healthy man before the trek, Chico was in the hospital for two months.

Soon after the rescue operation, the local county attorney’s office and the Freedonia attorney general’s office investigated the event. The report indicated that FOSS denied responsibility, saying that Chico signed a waiver and was aware that water would not be carried on the first three days of the trek. Most of the participants were aware that Chico was having problems. His breathing was labored, he was vomiting, falling and hallucinating and he consistently complained of cramping pains in his legs, a symptom of dehydration. The instructors advised him to eat pine needles. The inquiry has found that the three wilderness camp instructors accompanying the group were carrying emergency water. They chose not to offer it to Chico, preferring that he attempt to complete the day’s task. It has since emerged that two of the guests were offered and accepted water from the instructors who carried hidden containers of water. Chico was not given the option.

FOSS claimed that it required campers to sign waivers. FOSS had not received Chico’s signed copy of the waiver at its administrative offices prior to the trek, so the instructors had Chico sign a waiver at the beginning of the trek. Page seven of the eleven-page document, printed in small 8-point type, included the language, “I assume the risk of serious injury or death.” FOSS also claimed that Chico did not read course materials and that Chico may have eaten too heavily before leaving for the grueling course, contrary to FOSS instructions to participants. Another guest camper reported that Chico commented to her that he drank a gallon of water a day and ate cheesesteaks to bulk up before the expedition. The local county attorney’s office and the Freedonia attorney general’s office declined to bring a criminal case against FOSS or its instructors, saying that there was insufficient evidence. The

U.S. Forest Service has stopped FOSS from using the national forest for the survival course until FOSS gets outside advice on providing food and water.

Three months after the camping trip's terrible end, Chico Trentino and his wife, Pinky, come to your law offices seeking representation in a lawsuit. Chico states that he has finally recovered from the trip, and that he has not had a seizure since leaving the hospital and is about to return to work. Pinky says that after the whole ordeal, she is stressed out, crying, exhausted and depressed. She was not able to work while Chico was in the hospital. She visited him every day, thinking each day might be his last. She returned to work last month.

Evaluate claims against FOSS and its guides. Consider all elements of any claim. Discuss what proof you would need, what experts you might need, where you foresee problems in proving the case. Evaluate any defenses or immunities that defendant(s) may raise. Although there might be claims against the U.S. Forest Service, Freedonia, the rescue helicopter team, the hospital, doctors and other guests, do not analyze a tort claim against those entities or persons. Would you represent Chico and Pinky? Why or why not?

## **Question Two**

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.

It was windy one afternoon as Lydia Duckworth drove up the driveway of her house in her minivan. As she was driving up, she saw her next-door neighbor, Pete Marx, standing on a ladder while picking apples off of the apple tree in his yard. It was a straight ladder, leaning against the tree for support. Lydia drove into her garage, closed the garage door, and went into her house. Lydia Duckworth then set about the kitchen to cook dinner. As she was frying fish on the stove, she could see her neighbor Pete through her kitchen window. Suddenly, the ladder started to topple. Pete was able to avoid falling to the ground by grabbing onto a branch of the apple tree. He was hovering about five feet from the ground. Lydia, seeing that Pete needed immediate assistance, ran outside, through the side door of her kitchen, and into Pete's yard. Lydia is average height for a woman in the U.S. Pete is 220 pounds. Lydia picked up the ladder. It was heavy for her and difficult for her to incline toward the tree. Before she could lean the ladder against the tree,

the apple tree branch holding Pete cracked and then broke. As he was falling, Pete hit his forehead on the ladder in Lydia's hands, causing her to drop the ladder. Pete fell to the ground, but Lydia, standing under Pete, helped to break his fall. Pete had to get five stitches for the gash in his forehead from striking the ladder. Lydia, upon whom Pete fell, suffered a broken arm.

Back at the Duckworth residence . . .

When Lydia ran out the kitchen door to assist Pete, she left the door open. After Lydia ran outside, her 30-pound beagle dog, Harpo, got up off the kitchen floor and started to pursue Lydia. However, Harpo instead bumped into and closed the door, with Harpo inside. The door was set on the "lock" setting, and closing the door locked Harpo inside. Excited, Harpo barked and jumped about the kitchen. It is unclear and will be undiscoverable whether Harpo knocked over the pan holding the fish. What is known is that the grease from the frying fish must have caught fire. Lydia's kitchen started to burn.

Now back to the Marx's yard . . .

Lydia and Pete, sore and prone on the ground, smelled smoke and saw the fire burning in Lydia's kitchen. They ran to the Duckworth residence, but could not enter immediately because all the doors were locked. A neighbor across the street who noticed the smoke coming from Lydia's house called the Freedonia fire department. Pete ran back to his yard, grabbed the ladder, and used it to ram through a window in the Duckworth's dining room. Just then, Pete heard sirens in the distance. Fire trucks and ambulances soon arrived at the scene.

Lydia's house sustained \$50,000 worth of damage, including the dining room window. Harpo escaped, although he was blinded by injuries from the fire. Unfortunately, because of the wind, the fire at Lydia's house spread to Pete Marx's garage and caused \$100,000 damage to the garage and damaged his car inside the garage. Later, as his car was being towed to the repair shop, a semi-trailer truck driven by Rudolph Bass ran a red light and crashed into the flatbed tow truck carrying Pete's car. Pete's car, worth \$70,000 before the fire in his garage, was declared a total loss.

And finally to your law firm . . .

Pete Marx comes to the law offices where you are a junior associate. Pete would like your firm to represent him in a lawsuit against Lydia Duckworth and any other

defendants. Discuss what proof you would need, what experts you might need, where you foresee problems in proving the case. Evaluate any defenses or immunities that defendant(s) may raise. Pete would also like to know whether Lydia could successfully bring a suit against him for the damage to her house, injuries to Harpo or for her broken arm, as he is concerned about the costs of litigation. The senior partner at your firm asks you to write a memo assessing the case and recommending whether the firm should represent Pete. The “Good Samaritan” law in Freedonia exempts from liability a person who voluntarily renders aid to another in imminent danger but negligently causes injury while rendering the aid. Please do not discuss insurance issues.