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Exam No. _____

510-003 Torts
Fall Semester 2008

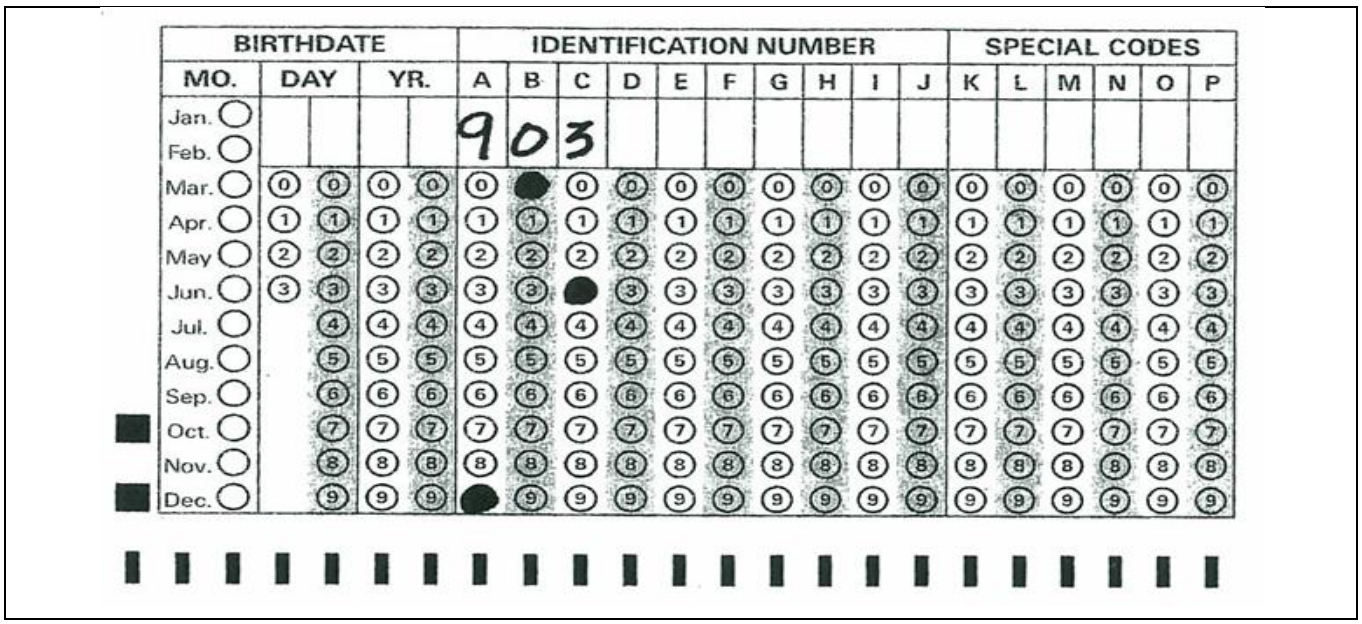
UNM School of Law — Professor C. Suzuki
Final Examination — December 18, 2008
Three Credits — **1:30-4:30 p.m. (3 hrs.)**

Examination Format

Scantron (Bubble Sheet) Instructions

Multiple Choice or True/False Questions

All answers must be marked on the answer sheet provided. Mark your answer using a pencil provided by the proctor. Use side one of the answer sheet. Mark your examination number on your answer sheet in the manner shown in the example below. Do not use the sample examination number!



Essay Answers

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.

Laptop (Typing) Exam:

1. Log off all programs that you are currently running or have opened!

2. Make sure you are connected to Lobo-Sec and have authenticated (entered your NetID and password).
3. Start the Exam4 program.
4. Make sure "Prepare to start new exam" is marked and click, "Next."
5. Enter your "Exam ID" number and confirm it.
6. Click the drop box next to "Course" and select "(Insert info. from IT)" and confirm. Click, "Next".
7. Optional choices screen: If you choose to change these options please do so. If not, click "Next".
8. Check the box marked "Got it" and click, "Next".
9. Type "Closed" for exam mode, check the box below that to confirm and click, "Next"
10. At this point Exam4 will indicate "Wait!" in the lower right side of the screen.

WAIT!

11. The proctor will tell you when to click "Begin Exam."
12. A "Security Check" to scan your computer will run. Please be patient. It should disappear within a short period of time. If not, please exit the room and see a proctor.
13. When beginning the exam, TYPE THE NAME OF THE SUBJECT AND THE PROFESSOR'S NAME AT THE TOP OF THE PAGE and proceed with your answer.
14. WHEN STARTING A NEW EXAM TOPIC, go to the Tools menu above and select "insert answer divider" for a page break. Again, type in the name of the subject and the professor's name and proceed with your answer.
15. Repeat number 13 of this process for each new exam topic.

ALL EXAM TAKERS

A five-minute warning will be given prior to the conclusion of the examination. When time is called, "stop" immediately.

Bluebook (Writers): At this point immediately stop writing, close all blue books, gather up any materials, and proceed to the check-in table in the Forum.

Laptop (Typers): At this point immediately stop typing and proceed to save the exam. Select End Exam, End Exam Now from the menu bar. Confirm that you want to end the exam. Select Submit Electronically.

- If the electronic submittal is not successful, close the window with the Red X and select File and Save Options. Select Exit (don't worry…the completed exam is saved to your hard drive).

In either case, exit the exam by selecting File and Save Options, Exit. If your exam was saved on the server, gather up any materials and proceed to the check-in table in the forum.

- If the exam did not submit electronically, reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
- Start Exam4 again. Your exam is listed; choose Select existing exam, highlight the exam name, and click Submit Electronically. Click OK to accept the default Start Code. If the exam still did not submit electronically, contact an IT proctor.

Go to the exam check-in table at the conclusion of the exam & turn in you completed examination receipt.

Professor's Instructions Follow on Next Page

Professor's Instructions

This exam consists of two essay questions and twenty-one multiple choice questions. It is recommended that you spend 75 minutes on the first essay question; 60 minutes on the second essay question; and 45 minutes on the multiple choice questions. Point values for the examination will be apportioned roughly equal to the recommended time allotments. Please take a moment to ensure that your exam consists of two essay questions and twenty-one multiple choice questions.

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.

Multiple choice questions: Credit for multiple choice questions will be given only for answers properly marked on the Scantron (bubble) answer sheet. Only one answer is correct for each question. If there appears to be more than one correct answer, choose the best answer. If there is any ambiguity in a question, please mark that question with a large circled star and explain your answer in the margin beside the question.

Essay questions: 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 on the thoroughness and thoughtfulness of your answers. The conclusions you reach are less important than the strength of your analysis.

Bluebooks: 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.

For Essay Question 1 and Essay Question 2, 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.

Essay Question One

Pierre Pachin was walking his dogs, Ginger and Buster, along Randall Avenue when a mechanical street sweeper swept up and killed Ginger. Ginger and Buster were

both on leashes on the side of the street when the sweeper approached. The vehicle was moving at about 30 or 40 miles per hour (m.p.h.), and the driver/operator was listening to music on his headphones. The street sweeper operator, Damien Dayton, is employed by Sweepclean Inc., a privately-owned street sweeping company. He had been given a copy of Sweepclean's internal rulebook by his employer when he started working for the company. Sweepclean's internal rulebook sets the speed limit at 10 miles per hour and prohibits the use of headphones when the sweeper is in operation. Dayton was not paying much attention as he drove the sweeper down the street, swerved to avoid a speed bump, and yanked Ginger, a Boston terrier, right out of its leash. Pierre suffered a torn ligament in his arm when the leash was yanked while in his hand. Witnesses chased the truck for blocks, but when Dayton finally stopped they say he refused to shut down the mechanical broom.

The mechanical street sweeper which killed Ginger is an 8,000 pound vehicle that is equipped with water tanks and sprayers used to loosen particles and reduce dust. The brooms gather debris into a main collection area from which it is vacuumed and pumped into a collection bin.

The street on which Pachin was walking his dogs is located in a privately owned subdivision. Streets in privately owned subdivisions are managed and maintained by private parties. Publicly funded services are not provided on these streets, so the costs of the street sweeper are paid for by the property owners. Since the incident occurred on private property with a private street sweeping company, there is no issue as to governmental immunity. These streets are intended for the exclusive use of the private property owners that maintain them. However, the subdivision is accessible to the public, and many members of the public living in the community surrounding this subdivision walk through that neighborhood because of its tranquil nature, stately terracotta homes, and beautifully maintained front yards with manicured lawns. The subdivision owners have in fact posted a sign stating, "Neighbors and members of the public are welcome to walk through our subdivision. Please pick up after your dog."

Sweepclean Inc. issued a statement regarding the incident and said it will investigate. "The recent incident involving a dog being swept up by a Sweepclean mechanical broom, while on cleaning duties, was a rare and unfortunate accident. Sweepclean has offered condolences to the family," a spokeswoman for Sweepclean said. The driver of the sweeper continues to sweep streets while the investigation is ongoing.

When Pachin broke the news to his mother, Carmen Cezares, she nearly collapsed. "You have no idea, you have no idea," she wailed as she told her neighbors what had happened. Cezares bought a plane ticket so that she could visit from New Mexico to help with the funeral arrangements.

Two weeks after the incident, Pierre Pachin, his mother Carmen Cezares, and Buster come to your law offices, where you are a solo practitioner. Pierre tells you that since the incident, all three of them have suffered greatly. Pierre and Carmen have had trouble sleeping. Pierre has taken a leave of absence from work because he is tired and weepy. Pierre's arm injury will require surgery to repair the torn ligament. Ginger was cremated and her ashes buried in a Chico City pet cemetery.

Pierre wants to know whether there is any court action that can be pursued regarding the incident with the street sweeper. "Ginger was like a family member in my house," said Pierre, an elementary school teacher. He says that he is completely torn over losing Ginger, and he cannot believe how it happened. He adds, "It's just a traumatic, terrible thing. Buster is so sad and refuses to eat, and I am afraid of losing him also. I had to take him to the veterinarian yesterday to put him on intravenous fluids during the day because he was dehydrated. We are devastated."

Analyze potential tort claims against Sweepclean Inc. and its employees. Evaluate any defenses or immunities that Sweepclean Inc. and its employees might raise.

Essay Question 2

Emergency medical technicians from Freedonia State Hospital declared 29-year-old Pascal Pena dead after he was struck by a car while crossing a highway. Dr. Medici, the medical examiner from the Chico City Coroner's Office, was called to the accident scene but did not examine Pascal then. Pascal was put into a body bag and sent to the Chico City morgue. Five hours later, Pascal was lying on the autopsy table. Dr. Medici was about to make the first cut for an autopsy when Pascal woke up and grabbed the doctor. Surprised, Dr. Medici yelped and keeled over dead, of a heart attack.

Under Freedonia state law, any medical doctor can declare a person dead. A medical examiner from the Coroner's Office may declare a person dead if death has not yet been declared. It is generally not the medical examiner's job to determine whether an individual is dead, as death is usually declared earlier by a doctor after attempting, unsuccessfully, to treat the person. Usually, the medical examiner is called to investigate the cause and manner of that death. Also under Freedonia state law, the Coroner's Office and its employees are not immune from liability for negligence.

As a result of the injuries from being struck by the car and the hours Pascal spent as a presumed dead man, Pascal suffers from a limp because his leg was broken when he was struck; his right index finger was amputated because it was injured in the incident and remained too long without blood flowing into it and it was not reset due to Pascal's presumed death; he has migraine headaches, which he did not suffer before being struck by the car; four teeth were knocked out from the impact of being hit by the car and Pascal

wears partial dentures to replace the missing teeth. Additionally, Pascal is scared of the dark and of doctors; of any kind of knife, which makes eating food that needs to be cut difficult; and he wakes up often, wondering whether he is dead or alive.

Pascal Pena comes to the law offices of Marks and Zeppo, where you are a junior associate. The senior associate asks you to write a memo discussing the likelihood of success of a negligence claim against the Chico City Coroner's Office and its employees. Discuss what proof you would need, what experts you may need, and what problems you foresee in the matter. Evaluate any defenses and immunities that potential defendants may raise. Make a recommendation as to whether the firm should sue the Coroner's Office and its employees.