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**Final Exam
Torts
Prof. Carey
Fall 2010**

Instructions:

You have **three hours** to complete this final examination. There are three questions, and each question is worth one-third of your final examination grade. This is an open book examination. If there are any ambiguities as to law or facts, please state what you would need to know and proceed with your analysis. You will be evaluated on the strength of your analysis and the thoroughness of your answers. If you write in a blue book, please write on only one side of each page. Good luck!

Question 1: Don't shoot the donut (1 hour)

Hal was deeply in love with Pam. They had dated for many years but had broken up last year when Pam decided to reconcile with Brad, her ex-boyfriend and the father of her seven-year old daughter Dottie. Hal recently learned and was very upset by the fact that Pam had married Brad. Hal started weekly therapy sessions with a therapist named Tom to deal with his strong emotions about Pam's recent nuptial. Hal discussed many things with Tom, including how he was recently fired from his job as a wild game hunting instructor and how he was having a hard time controlling his anger. Specifically, he told Tom that he sometimes thought about shooting Pam. Pam was completely oblivious to Tom's feelings. She was busy working full-time at the Donut Shop, which was a joint with delicious donuts located in a very bad neighborhood. Pam enjoyed her job, including chatting with the customers and stuffing her face with donuts. However, in the last few months, her job had become rather scary as there had been a string of armed robberies at the Donut Shop.

One Saturday night, Hal grabbed a gun from his gun rack and drove over to the Donut Shop, intending to shoot Pam. When he arrived, Pam was behind the counter cheerfully packaging donuts. She was the only Donut Shop employee working that night, and there were no customers in the shop. Pam didn't see Hal walk into the shop. Instead, she was filling a box with jelly donuts, one by one. She held each donut up and looked at it before carefully placing it in the box. When Hal saw Pam, his heart softened. He decided that instead of shooting Pam he would try to win her back by impressing her. He took aim at the jelly donut in her hand, intending to shoot right through the center of it, thus showcasing for Pam his excellent marksmanship. Hal pulled the trigger. The bullet hit the edge of the donut, sending gelatinous goo everywhere. The bullet also hit Pam's hand. Pam collapsed on the floor, surrounded by a pool of her own blood. Because the shot was at close range, Pam lost most of her hand and all of her fingers.

Analyze all possible tort claims in the above scenario.

Question 2: Sam hates balloons (1 hour)

Mel had a real passion for balloons. He had been collecting them his whole life – helium balloons, balloon animals, and plain old party balloons. Mel was a lonely 34 year-old guy who had a much below average IQ. Mel liked to take the elevator to the top of the tallest building in his city and drop water balloons from the roof to the street level, which was 32 stories below. One day, while he was on the roof, he met a gregarious 15 year-old honors student named Lyle. Lyle was also on the roof of the building with a big basket of water balloons, about to catapult them to the sidewalk below. Mel and Lyle hit it off and decided to meet on that roof every Friday afternoon to throw water balloons off the building together. Mel volunteered to bring the water balloons. The following Friday, Mel and Lyle met on the roof. Mel brought a huge bag of water balloons. All of the water balloons were same baby blue color and were manufactured by the same balloon manufacturer. Mel and Lyle wanted to begin this fun joint enterprise together, so they each took a water balloon to drop at the same time. They counted out loud, “one, two, three,” and dropped their balloons at the same moment. Sam – a single, childless, and wildly successful radio announcer with a buttery voice – was walking down the sidewalk in front of the building. The balloons fell 32 stories, and one of the balloons slammed into Sam’s head. Sam didn’t know what hit him, and he immediately lost consciousness.

Sam suffered a serious head injury and was rushed to the hospital. At the hospital, Sam received emergency surgery, which was performed by Dr. Dave. Because it was an emergency and Sam was still unconscious, Dr. Dave did not need to obtain Sam’s consent for the surgery. During the surgery, Dr. Dave, a skilled surgeon, used proper and well-established medical procedures. However, no one on the surgical team remembered to remove the surgical balloon from Sam’s head before stitching him up. As a result of the initial head injury, Sam lost his short-term memory and suffered from a lot of pain. The surgery did not correct his short-term memory loss. As a result of the surgical team’s failure to remove the surgical balloon, Sam suffered additional brain damage and permanently lost his ability to speak.

Discuss all possible tort claims above, including what damages may be recoverable and from whom the plaintiff(s) could recover such damages.

Question 3: Mabel to the Rescue (1 hour)

Sue is a woman who is always looking for a good challenge. Sue decided she wanted to pursue fire eating as a hobby and has been taking fire eating classes at Big Top Inc.’s circus school. Sue’s mother Myrtle is always interested in whatever extracurricular activities her daughter is pursuing. Myrtle came to watch Sue participate in a group fire eating class at Big Top. Myrtle sat in the folding chairs set up nearby for spectators. Hank, Sue’s instructor, began the class. Hank was holding two lit torches, about to hand one to Sue’s classmate. He was not careful when handing off the torch, and as a result the torch flew to the ground, starting a small

fire. Hank, still holding the other torch, ran for a bucket of water. As he sprinted for the water, he ran past the spectator section. Myrtle was wearing a significant amount of hair spray to keep her poufy hairstyle in place. Hank's torch came too close to Myrtle's head, accidentally setting her bouffant hairdo on fire. Hank, not noticing the flame, continued to retrieve a bucket of water, returning to throw it on Myrtle. Meanwhile, Mabel, a grandmother and fire eating class spectator, flew into action to save Myrtle. She ran toward a fire hose and tripped on her own two feet, sailing to the ground. Mabel had especially brittle bones as a result of her age and her health condition, and she broke many bones in her arms and legs as a result of the fall.

Myrtle sustained fourth-degree burns and experienced excruciating pain. She spent two months in the hospital, where she was unable to get out of bed and could only watch daytime TV, which she despises. Myrtle died two months after the accident as a result of her injuries.

Discuss all possible tort claims in the above scenario. Be sure to address damages.