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**Final Exam
Torts
Prof. Carey
Fall 2011**

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: (1 hour)

Chet is an up and coming rodeo star. Until about six months ago, no one had heard of him. However, recently Chet has been taking the top prize in every steer roping competition he's entered. Mack has been roping steers on the rodeo circuit for years. He was up against Chet in the Regional Championship two weeks ago. Mack anticipated that he would win the Regional Championship and was relying on the prize money from that competition to fix the brakes on his pick up truck. Unfortunately for Mack, Chet won the Regional Championship. Mack went home from the Championship without the prize money and with a huge grudge against Chet. Mack decides to get even with Chet.

Chet lives alone on a rural and tranquil cattle ranch. Mack drives his pickup to Chet's ranch. He drives around and around Chet's house, all the while blowing an air horn, yelling at Chet's house through a megaphone (or "bullhorn"), and shining bright lights in Chet's windows. Mack yells all sorts of extremely rude expletives and insults Chet's mother and Chet's skills as a cowboy. Even though Chet is a rodeo star, he is still a sensitive guy and finds the experience to be very upsetting. Mack continues this behavior all night long and then finally leaves early in the morning. Mack returns the next evening with his air horn, megaphone, and bright lights. He continues harassing Chet in this way for a week. Chet has taken to hiding and sleeping in his bathroom to muffle Mack's insults and avoid being kept awake by the bright lights. Chet's nerves have become frazzled, and Chet has given in to occasional yet violent weeping. Chet has hardly slept a wink for a week, and he's become neurotic and depressed.

At the end of the week, Mack encounters a large patch of spilled corn on the highway while driving to Chet's ranch. Mack's pickup starts to skid on the corn. Mack slams on the brakes, but the brakes do not respond. Mack's pickup truck slides into the other lane, hitting an oncoming minivan driven by Susie. Susie's teenage son Levi is also in the car. Susie is immediately knocked unconscious and is very seriously injured. Levi is not injured and attempts to care for his mother. He calls for an

ambulance on his cell phone and, fearing that the minivan will explode, pulls his mother's mangled and bloody body from the vehicle. He sits next to his mother, sobbing, fearing her death, and holding her head in his arms. Susie is taken by ambulance to the hospital where she receives several operations. Susie has to have her legs amputated due the accident and spends weeks in the hospital. She will never be able to return to her job as a gym teacher at a public middle school. Levi has to help his father Rick take care of his younger sister Kathy because of Susie's temporary hospitalization and permanent disability. No one ever discovers who spilled all of that corn on the highway.

Analyze all possible tort claims in the above scenario.

Question 2: (1 hour)

Barb is a Vegas showgirl. She loves the applause, the feather headdresses, and the sequined costumes. Sometimes she is also a featured performer in a belly dancing performance at one of the major themed casinos. Barb has always been very obsessed with her appearance. She primps and preens and almost always wears highly revealing clothing. Recently her tummy has been protruding a wee bit, and she decides to get a tummy tuck (also called an "abdominoplasty"). She consults with Dr. Diamond about a tummy tuck. He explains that there are two commonly used tummy tuck procedures, the "complete abdominoplasty" and the "partial abdominoplasty." He also tells her that there's a new and rarely used procedure called the "high lateral tension tummy tuck" which has not yet caught on amongst the mainstream medical community. He tells Barb some of the potential risks of a tummy tuck, including blood clots, heart attack, nerve damage, and infection. Barb tells Dr. Diamond that she does not care which of the three procedures he uses. She asks Dr. Diamond if anyone will be able to tell that Barb has had the surgery, and Dr. Diamond says she will look "fantastic" and "like new." Barb, looking forward to having a body that will look great in a string bikini and in her various showgirl costumes, decides to get the surgery.

Dr. Diamond performs Barb's tummy tuck using the "high lateral tension tummy tuck" procedure. Dr. Diamond is very distracted during the surgery. He sings show tunes and generally does not pay much attention to what he is doing. He nicks a blood vessel, which can be common in "high lateral tension tummy tucks." This leads to extensive bleeding. Dr. Diamond gets the bleeding under control. Barb wakes up after the surgery and learns of the complication. She is discharged from the hospital but has a painful hematoma (a localized collection of blood in the body outside of the blood vessels) as a result of the surgery. The hematoma will slowly reabsorb into the body on its own. It also becomes very clear that Barb will have a long, brutal, and permanent scar from the procedure. Barb's quick internet research reveals that such scarring is routine for tummy tuck patients. Barb is devastated and spends most of her time looking at photos of herself in beautiful showgirl outfits and crying. Barb's eight-year old daughter Precious, who is spoiled rotten by Barb, tries to console her mother. Barb sends Precious out to play with her pony.

About two weeks after the surgery, Barb decides to go out and buy herself a cantaloupe to make herself feel better. (She loves cantaloupe). She stops at a local farm stand run by Frank, a farmer. She picks out a cantaloupe, takes it home, and eats the whole thing in one sitting. Unbeknownst to Barb or Frank, the cantaloupe is contaminated with bacteria that causes listeriosis, a potentially fatal bacterial infection. Barb, who is particularly susceptible to listeriosis because of her compromised immune system, becomes very ill and dies alone at home. (Precious is away at a camp in Paris). It turns out that Frank's cantaloupes have been sickening a number of folks who shop at his farm stand. He has no idea, however, because he has not checked his farm stand voicemail for about a month. Scores of people have called Frank's farm stand within the last several weeks to leave messages complaining that his cantaloupes have made them very ill. After Barb's death, her sister Bernadette is left to deal with Barb's estate.

Discuss all possible tort claims above. You do not need to discuss any potential claims against the hospital.

Question 3: (1 hour)

Chip is working on his PhD in biology. He is writing his dissertation on the Tartucca spider, a highly poisonous spider that lives in the Amazon River Basin. The region where the Tartucca spiders live, called Tartuc, is highly remote and very difficult to access. To visit the Tartuc region, one must take a chartered boat down the Amazon River and sleep on board because the riverbank is so lush with vegetation that there is nowhere to stay on the banks. Chip wants to make his first trip to the area to examine these special spiders first hand. Chip learns that Tomorrow Tours is offering its first group trip to the Tartuc region of the Amazon River Basin. Chip contacts Toby of Tomorrow Tours about joining the tour group. Toby goes on and on about the beautiful sunsets of the region, the small pink dolphins, and the trinkets offered for sale by the indigenous people there. It becomes clear to Chip that Toby knows nothing about the lethal Tartucca spiders that reside in the region. This is not surprising because Tartucca spiders were only recently discovered by a colleague working in Chip's field. Chip decides not to alert Toby about the spiders because he is afraid that Toby will cancel the trip out of fear of the deadly bite of the Tartucca.

The tour group, led by Toby, leaves for the Amazon basin and Tartuc. The six other members of the tour group are tourists, excited to explore the Amazon region, watch jumping dolphins, enjoy sunsets, and purchase exotic trinkets. When the boat arrives at Tartuc, the tourists settle into their primitive accommodations on board. While most tour guides hand out mosquito nets for use over their tour members' beds at night, Toby sends his patrons to their rooms without any nets at all. The tourists fall asleep to the sounds of the Amazon river and the soft rocking of the boat. During the night, Chip wakes up to find three Tartucca spiders crawling on his face. He screams. Toby and a tourist named Gabe, both awakened by the screaming,

stick their heads out the doors of their cabins. Toby tells Gabe, "Don't worry. I'll handle this." Gabe happily ducks back into his cabin and locks the door. Gabe decides he is not concerned and quickly falls back asleep. Meanwhile, Toby rushes into Chip's cabin to see what is going on. When he sees the big hairy, brightly colored spiders biting Chip's face, Toby turns and flees. The spiders' venom swiftly brings about Chip's death. The other tourists snooze through the whole episode. They enjoy the rest of their tour of the Tartuc region ignorant of the events that transpired and with no additional encounters with Tartucca spiders.

Toby ensures that Chip's remains are sent back to the Finest Funeral Home, located in Chip's hometown. The Finest Funeral Home puts Chip's remains in the wrong casket. When Chip's fiancée Franny arrives at the funeral home for the service, she is shocked to find a nun dressed in a habit lying in the open casket. She turns and runs for the door but slips on the extremely slick floor of the funeral home's chapel. The funeral home has been using bowling alley lane wax on its floors for the past year or so. It was able to buy this wax from a bankrupt bowling alley for much cheaper than regular floor wax. Fran breaks her arm due to the fall. Chip has no living family members.

Discuss all possible tort claims in the above scenario. You do not need to address the liability of the boat operator or the bowling alley. Any claims that arise in the Amazon region can be brought in U.S. courts.