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**Torts**  
**Prof. Carey**  
**Fall 2014**  
**Final Exam**

**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**

The County Animal Shelter is owned and operated by Bernalillo County. The shelter provides pet adoptions, lost and found pet listings, veterinary care, and animal euthanasia. The shelter manager Pete is a real “pet person.” He gets to know all of the pets that are up for adoption. Fido the dog had been up for adoption for a week. Pete was eager to adopt out Fido because Fido had a terrible temperament. An elderly lady had almost adopted Fido, but Fido had growled at her at the shelter. After that, Pete took care of Fido’s basic dog needs but would not play with Fido because he did not feel safe doing so. One day, the Miller family (Mark, Margo, and Joey) came into the shelter and fell for Fido. He was cute and fluffy and looked so innocent. They adopted Fido and took him home. Neither Pete nor any other shelter employee mentioned to the Millers that Fido had a terrible temperament.

After the Millers got Fido home, they noticed that Fido became very aggressive whenever someone other than the Millers came into the house or when Joey, the Millers’ eight year-old son, would roughhouse. Fido would bark aggressively and bare his teeth. The Millers decided to keep Fido in his crate whenever possible. One day, Margo and Mark Miller – Joey’s parents – hired a new babysitter Becky to babysit Joey. Mark and Margo did not say anything to Becky about Fido or give any specific instructions regarding the dog. Mark and Margo left the house for a party. Fido started whining in his crate, and Becky let him out. Joey was playing on his pogo stick. Fido became worked up while chasing Joey and his pogo stick around the house. Fido bit Joey in the leg, severely lacerating the skin in several places. Becky tried to intervene as Fido was attacking Joey. Fido bit Becky’s hand, breaking the skin and puncturing a ligament. Joey has hemophilia. Because his blood-clotting level is severely reduced due to the hemophilia, Joey had extensive internal and external bleeding. The bleeding in his leg caused his leg to swell. This pressed on nerves and caused Joey pain for several weeks. Joey received proper medical care but incurred medical bills. Becky also incurred medical bills and had to miss three weeks of work as a babysitter. Becky handled the incident well. She called Margo and Mark and got Joey to doctor promptly. Fido was current on all of his vaccinations and does not have rabies.

Please address all tort claims that arise in the scenario above. If a defense would preclude a claim, first address the viability of the underlying claim and then discuss the defense.

## **Question 2**

Mike took his son Muneer to Thatz, an indoor family fun center, to celebrate Muneer's ninth birthday. Muneer begged Mike to take him on the bumper cars at Thatz. At first Mike resisted, but then he realized he might actually enjoy the bumper cars. Thatz requires everyone who rides the bumper cars to sign a waiver, and Mike signed waivers for himself and Muneer. Mike and Muneer got into separate bumper cars and pulled into the middle of the bumper car floor. As soon as Mike reached the center of the floor, Andy, a 12 year old who Mike did not know, slammed directly into the side of Mike's car. This irritated Mike. He drove around the outside of the course. Andy pursued him and bumped him again and again. Finally Mike had had enough. He waited until Andy was driving away from him. Mike put his pedal to the metal and pursued Andy at full speed. He slammed into the back of Andy's bumper car as hard and fast as he could. Unbeknownst to Mike, Andy was not wearing the bumper car seat belt. Andy flew forward out of the bumper car and hit his head. Mike felt terrible. He hadn't meant to hurt Andy. He just wanted to get even with the little punk after he had hit Mike's bumper car so many times.

The Thatz employee Rick who was supposed to be monitoring the ride looked up from his smart phone when he heard Andy scream. He called 911 right away. An ambulance owned and operated by Acme Ambulance arrived at Thatz within five minutes. On the way to the hospital, Thad, the ambulance driver, was showing off his air guitar skills to the EMT. Thad was not paying attention to where he was driving and ran a red light. The ambulance hit the side of Patty's car as she proceeded through the intersection with a green light. Miraculously Patty was unharmed but was severely shaken. She was so upset that she vomited at the scene. Her Pontiac Bonneville sustained some damage. Since the accident, Patty has been afraid to drive and is seeing a psychiatrist to deal with her anxiety. The collision exacerbated Andy's head injury. Andy was unaware of this at the time as he was unconscious throughout the entirety of the ride to the hospital in the ambulance. Andy suffered a traumatic brain injury. His doctor predicts he will be impaired for life. Specifically, Andy will suffer from profound confusion, exhibit combative tendencies, and have severe mood swings.

Please address all tort claims that arise in the scenario above. If a defense would preclude a claim, first address the viability of the underlying claim and then discuss the defense.

### Question 3

Hans owns a house in a mid-sized town. He decides that he is going to start raising chickens. He orders 30 baby chicks which he raises in his bedroom using heat lamps. While the wee chicks are growing, he builds a chicken coop in his backyard. When the chicks are old enough, he moves them into the chicken coop. It is a handsome and well-constructed coop. The coop is about 40 square feet. It is well-ventilated and easy to clean. Hans offers his ten year-old nephew Nathan and his eleven year-old niece Nell (who are brother and sister) the opportunity to make some pocket change by helping him with the chickens. Nathan and Nell clean the cages and collect the eggs. They also feed the chickens. Because Nathan and Nell are busy with extracurricular activities and spending time with their parents (with whom they are quite close), Nell and Nathan only visit the chicken coop a few times a week. Hans doesn't like the nasty job of cleaning the coop so he just has Nathan and Nell clean it about once a week. Nell starts feeling ill and leaves Nathan to the chicken tending responsibilities while she recuperates. One day, Nathan enters the coop. There are so many chickens right by the entrance that he trips and falls. He hits his head on a chicken trough feeder. He runs into Hans's house. Hans drives him to the emergency room where Nathan gets ten stitches. Meanwhile, Nell's illness becomes worse. She is very fatigued and has a fever that will not go away. Her parents take her to see Dr. White. The doctor discovers that Nell's spleen is enlarged. Dr. White diagnoses Nell with mononucleosis. Nell actually has histoplasmosis.

Histoplasmosis is an infectious disease caused by a fungus called *Histoplasma capsulatum*. The *Histoplasma* organism thrives in moderate temperatures and moist environments. Droppings from chickens, pigeons, starlings, blackbirds, and bats support its growth. Birds are not infected with it because of their high body temperatures, but they do carry it on their feathers. Bats can be infected because they have a lower body temperature than birds and can excrete the organism in their droppings.

Nell's histoplasmosis results in a lung infection. Because Nell's histoplasmosis goes undiagnosed and untreated, it develops into chronic histoplasmosis and spreads into Nell's heart. As a result, Nell is lethargic and sickly and requires ongoing medical treatment. Bats live in the attic of Nell's family home.

There is a Chicken Ordinance in Hans's town.

#### Chicken Ordinance

- (1) Setbacks. Coops or cages housing chickens shall be kept at least twenty-five feet from the door or window of any dwelling or occupied structure other than the owner's dwelling. Coops and cages shall not be located within five feet of a side-yard or rear-yard lot line. Coops and cages shall not be located in the front yard.
- (2) Enclosure. Hens shall be provided with a covered, predator-proof coop or

cage that is well-ventilated and designed to be easily accessed for cleaning. The coop shall allow at least two square feet per hen. Hens shall have access to an outdoor enclosure that is adequately fenced to contain the birds on the property and to prevent predators from access to the birds. Hens shall not be allowed out of these enclosures unless a responsible individual, over 18 years of age, is directly monitoring the hens and able to immediately return the hens to the cage or coop if necessary.

Please discuss what tort claims arise in the scenario above. If there is information you need in order to reach a conclusion, please indicate what information you need and how that affects your analysis.