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Exam No. \_\_\_\_\_

**Torts 510-002**  
Fall Semester 2015

UNM School of Law  
Final Examination  
Three Credits

Professor Mary Pareja  
Thursday, December 10  
1:00 p.m. - 4:00 p.m. (3 hours)

**Professor's Instructions**

**Materials allowed:** You may use only your textbook, an outline of your own making, your class notes, and a basic calculator. You may not use any prior quizzes or multiple choice homework packets, or the midterm examination.

**General Instructions:** This exam consists of 45 multiple choice and true or false questions, worth 50% of the final exam grade. I suggest you spend approximately 90 minutes on this portion of the exam (or 2 minutes per question). The other 50% of the final exam grade is based on single essay. I suggest you spend approximately 90 minutes on this portion of the exam.

**Multiple Choice General Instructions:** Choose the best answer for each multiple choice question. Answer all questions according to Torts principles of general applicability. If there is a majority rule, follow the majority rule. Assume that there is no applicable statute unless otherwise specified; however, survival actions and claims for wrongful death should be assumed to be available. Unless specified otherwise, assume joint and several liability and pure comparative negligence.

**Essay General Instructions:** There are multiple issues contained in the fact pattern. You should organize your answer in a logical manner. You will receive points for issue spotting and accurate and complete statements of rules but mostly for your analysis. I also sometimes give extra credit points for answers that are particularly well written or that exhibit good legal judgment and a client-centered focus. If there is a split of authority, analyze the question using the rule followed by a majority of the jurisdictions, but note any minority alternatives that have substantial support. Be sure to engage in analysis, applying facts to the legal rules, rather than just stating conclusions. Be comfortable affirmatively stating conclusions that are clear, but if there are counterarguments to your position, you should note them.

## Multiple Choice Instructions

All answers must be marked on the answer sheet provided. **Only one answer is correct for each question.** If there appears to be more than one correct answer, choose the **best** answer. Mark your answer **using a pencil provided by the proctor.** Begin on side one of the scantron/answer sheet. **Do not write your name on the scantron/answer sheet. Mark your EXAM ID on the scantron in the area entitled "Identification Number" as illustrated below. Do not use the sample examination number!**

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### ALL EXAM TAKERS

If you have any questions or feel the need to explain/clarify your interpretation or understanding of the question being posed by the professor, please write them on the exam and **do not** sign your name.

If you have an emergency, procedural question, or issue that may occur during this exam period, **do not contact the professor**, please contact the proctor or the Registrar's Office (William or Nicole) at 277-3649/2059 or [jackson@law.unm.edu](mailto:jackson@law.unm.edu) or [mcfarling@law.unm.edu](mailto:mcfarling@law.unm.edu)

You may **not** make/keep a copy of this exam! You are required to **return** this exam with your answer.

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

## EXAM CHECK-IN PROCEDURES

**If you finish** the exam **before the 5 minute warning** is given, complete the following steps:

1. Place the **Exam**, **Bluebooks** if used, and **ALL scratch paper** (new or used) **inside** the envelope.
2. The **EXAM** should have your **EXAM ID** written on it.
3. Write your **NAME** on the **outside of this envelope**, (but not on the exam).
4. **DO NOT SEAL THE ENVELOPE.**
5. Leave the exam room and **take the exam envelope to the designated Check-In table in the forum.**

**NOTE:** If you are **in the room at the 5 minute warning**, then **REMAIN IN THE ROOM** for **EXAM CHECK-IN.**

**[Exam begins on the next page]**

## ESSAY QUESTIONS: FACT PATTERN

Harold, a 68 year old man, was on a business trip to Little Town, Midwestern State, USA. He arrived on a Thursday night at 8 p.m. and checked into a Motel 6 on Lima Road. He told Clark, the desk clerk, that he was really tired from travelling and was just looking forward to good night's sleep. Clark helpfully explained to Harold how to turn the ringer off on the phone, so that Harold wouldn't be disturbed. Harold thanked Clark and then went to his room. Hungry, Harold decided to order pizza to be delivered. At 8:30 p.m. he called Dominos and ordered a small pepperoni pizza with a diet Coke. Harold told the person taking the order that he had a nut allergy and asked if there were any nut products on the pizza. The order taker assured him that there were no nuts on the pepperoni pizza.

While he was waiting for the pizza to be delivered, Harold took a quick shower, changed into his pajamas, and turned on the TV to watch Dancing With The Stars. Thirty minutes later (as promised), Dominos delivered Harold's food. Harold paid the bill and gave the driver a nice tip. Then he sat down to enjoy his pizza. After the first slice, Harold's eyes began to itch and his skin became splotchy. He figured maybe the soap from the shower was irritating his skin (which was particularly sensitive). After the second slice, Harold began having difficulty breathing. Unfortunately, he also was disoriented and confused and didn't realize that was having an allergic reaction. Harold's symptoms worsened rapidly. Finally realizing what was going on, he stumbled toward the bathroom to get his epi-pen (a shot of the drug epinephrine he could give himself which would stop the allergic reaction), but fell down unconscious before reaching his toiletry bag. It is estimated that Harold lost consciousness around 9:30 p.m.

Meanwhile, also at 9:30 p.m., Harold's wife, Maude, who was back in their home in a neighboring state, was tired and wanted to go to bed. Throughout their 45 year marriage, Harold and Maude had always spoken to each other every night before going to sleep, even when Harold was traveling. They had never missed a single goodnight. Maude called Harold on his flip phone, but it rang without an answer, finally going to voice mail. She tried two more times with the same result. Wondering if Harold couldn't hear the phone, she called the Motel 6 and asked the desk clerk (Clark) to connect her. Clark hesitated, remembering that Harold was anxious to not be disturbed, but put the call through to the room. It rang 5 times before rolling back out to the front desk. Maude was very concerned at this point. Maude told Clark about the goodnight call ritual, that they had never missed a single night, and that Harold was long past the days of going out at night. Clark tried putting the call through again, but of course Harold didn't answer. Maude asked Clark to check on her husband, but Clark refused, telling Maude that Harold was probably just in the shower or using the restroom or something. By this time it was almost 10 p.m. Maude hung up the phone and tried to sleep, but couldn't do it. She just knew in her heart that something was wrong. She waited until 10:20 p.m. and tried calling Harold again on his flip phone. When she couldn't reach Harold, she again called Clark and, in tears, asked him to check on her husband. Clark refused, convinced that Maude was just an overprotective wife. For all Clark knew, Harold had a lady friend in the room with him. Maude hung up, and tried again at 11:00 p.m. to reach Harold, and again asked Clark to check on Harold, and Clark again refused.

Finally, at 1 a.m., Maude called the Ft. Wayne police who agreed to do a wellness check on Harold. The police found Harold unresponsive on the floor, but alive, and called for an ambulance. The EMTs arrived and loaded Harold into an ambulance for transportation to the hospital. While going through an intersection against a red light but with lights and siren on, the

ambulance was hit by a driver named Derek. Harold was uninjured in the accident, although the EMT suffered a concussion. Derek had earbuds in and the music up loud and didn't hear the ambulance or see it until it was too late. Derek was listening to the music to keep himself awake. He was driving home from a double shift at the factory where he worked and was bone tired. Derek has no assets, little income, and no car insurance.

A second ambulance was called and took Harold to the hospital. Doctors determined that Harold had suffered severe anaphylactic shock as a result of his nut allergy and that he had suffered a heart attack as a result of the anaphylactic shock. Harold survived the incident, but approximately half of his heart tissue died during the heart attack, a fact which greatly impacted Harold's quality of life. Doctors determined that the extent of Harold's injuries would be far less severe if Harold had been treated more quickly. Unfortunately, Harold died six months after being discharged from the hospital. Doctors determined his cause of death was complications from the heart attack he suffered at the Motel 6.

Maude has consulted with you to determine whether she has any claims against any of the people mentioned. Please discuss any potential claims that are reasonably implicated by these facts, including any weaknesses in the claims and potential defenses. If you think a claim will likely fail, please explain why. If additional facts need to be developed, please explain what they are. Please also briefly summarize the damages likely to be available in this case.