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**Torts 510-001**  
Fall 2018

UNM School of Law  
Final Examination  
Three Credits

Professor Camille Carey  
Wednesday, December 12  
1:00 - 4:00 p.m. (3 hours)

**Professor's Instructions**

**Materials Allowed:** This is an open-book exam. You can use your casebook, notes, outline, or other written materials you have prepared. You may not use commercial outlines.

**General Instructions:** You have **three hours** to complete this final examination. The exam consists of 41 multiple choice questions, worth one-half (1/2) of your final exam grade. You should spend 90 minutes on this portion of the exam (or approximately 2 minutes per question). **Do the multiple choice questions first.** There is one essay question that constitutes the other one half (1/2) of your final exam grade. You should spend 90 minutes on this portion of the exam. **Do the essay questions after you have finished the multiple choice questions.**

**Essay Instructions:** You should organize your answer in a logical manner. You will receive points for issue spotting, giving complete rules, and providing thorough and correct analysis. If there are different jurisdictional approaches, analyze the issue using all of the major jurisdictional approaches. If there are any ambiguities as to law or facts, please state what you would need to know and proceed with your analysis. Be sure to apply law to facts rather than just stating conclusions. If you write in a blue book, please write on only one side of each page.

Good luck!

### Essay Question (1.5 hours)

Toby lives in a three-story apartment building. He runs his own small company that specializes in the removal of rodents. Most rodent removal companies maintain garages and warehouses to store their traps and chemicals. Toby has been short on cash, so he decided not to renew the lease on his warehouse. He sold most of his traps and chemicals, and what he kept he stores in his company van. (He removes the rodents from the traps before storing the traps, of course). Tonight, Toby has a hot date with Kim. Toby pulls all of the traps out of the van and shoves them onto the outdoor fire escape of his apartment building, right against the fire door. He doesn't want to pick up Kim at her house with a van full of vermin traps. He leaves to go on his date with Kim.

Within a minute or two of Toby dumping the traps on the fire escape, a fire breaks out in the apartment building. The fire originates in Larry's apartment, which is on the first floor. Larry loves lava lamps. He is a 17 year-old college freshman who lives alone. To place his favorite lava lamp exactly where he wanted it, he used an old frayed extension cord. Larry has been worried that the extension cord is unsafe. He keeps meaning to go to the hardware store to get a new one, but he keeps forgetting. In fact, the extension cord does catch fire due to its frayed condition. Larry had turned in early and was fast asleep when the fire started. The smoke alarms in Larry's apartment and in the apartment building hallway go off. When Larry is finally woken by the fire alarms, he sees the fire in his apartment and escapes out the window. He suffers some injuries related to smoke inhalation. Larry is unemployed so he doesn't miss any work.

Meanwhile, on the third floor, Mark, another tenant, hears the smoke alarm. He is in the middle of a heated cell phone conversation with his wife Winnie. Mark recently filed for divorce, but he and Winnie haven't finalized the divorce yet. They cannot agree on custody of their two children named Patty and Peter or their poodle named Pal. Winnie moved out of the apartment two weeks ago with the kids and the poodle. Mark knows he should evacuate the building, but he wants to get in the last word. He also knows that the fire escape is right outside of his apartment so he should be able to escape if there truly is a fire. After one minute, Mark decides he should leave his apartment. He continues talking to Winnie on his cell phone. He exits his apartment and tries to open the fire door onto the fire escape. The door won't budge because of the rat traps on the other side. He looks down the stairwell and sees that he can't escape through the front door because the fire has moved from Larry's apartment into the building's entryway.

Mark suffers smoke inhalation-related injuries and third-degree burns over 80 percent of his body before he is rescued by firefighters. He talks to Winnie on the phone through the entire ordeal, describing events as they unfold, until he passes out from smoke inhalation. The firefighters come as soon as they can. Mark falls into a coma in the ambulance on the way to the hospital. So far, Mark has been hospitalized for three weeks and is still in a coma. He is receiving painful treatments for his burns. He will ultimately be disfigured as a result of the burns. Before the fire, Mark worked as a local television talk show host. It is unknown whether Mark will come out of the coma. Nonetheless, his cold-hearted boss has already decided that Mark will not be welcome to continue his job on television if he comes out of the coma, given his scarred appearance.

No one else was in the building at the time of the fire.

Winnie becomes mentally unstable as a result of talking to Mark while he was trapped in the fire. She doesn't love Mark anymore, but she is upset that Mark may not be able to help support their children due to his injuries. She becomes fixated on harming Toby because she blames him for the harm that befell Mark. She shows up at the apartment building and slides an envelope under Toby's door. Inside is a letter which states, "I will kill you, you filthy man. Love, Winnie." There is also a photograph of a gun inside the envelope. (Winnie doesn't own a gun. Instead, she took a picture of a gun she looked at in a retail store). Toby is sitting on the couch in his apartment when he sees the envelope slide under the door. He opens the envelope, reads the letter, and looks at the photograph. He freaks out, runs into the bedroom, and slams the door. He calls 9-11.

Discuss all viable tort claims and defenses in the above scenario. Do not address recovery for any property damage.