

## COPYRIGHT NOTICE

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Suzuki Torts Fall 2020  
Essay Question 1  
(70 minutes)

“Wipeout” is a reality television competition show, in which brave individuals navigate an extreme obstacle course with demanding physical challenges featuring giant balls and pitfalls designed to trip them up, that often result in spectacular crashes. “Wipeout” is billed as the world’s biggest obstacle course and contestants are mercilessly mocked on the show, much to the delight of viewers. The show ran on ABC from 2008 until 2014 and was rebooted by the TBS cable television channel and the production company Endemol Shine North America. TBS announced in April 2020 that the show would be returning, and it said in September that its new hosts would be John Cena and Nicole Byer. No premiere date has been set yet.

Unlike the reality television competition “American Gladiators,” whose buff contenders briefly returned to NBC television in 2008, “Wipeout” has contestants who are average Americans, albeit ones willing to collapse into a vat of mud in their quest for \$50,000. “Wipeout” executive producer Matt Kunitz said the show was not embarrassing “because the contestants all volunteer. While it may look painful, we have designed a very safe course.” Mr. Kunitz said that the show spends about \$100,000 on padding alone. “It’s one of our biggest-budget items,” he said.

The eligibility requirements for “Wipeout” hopeful participants are pretty standard but still present the show with some of its greatest contestants, with a minimum age set at 18 years old. The show is also limited to Freedonia residents, so proof of residency is required—most likely for health and safety regulations that govern televised activities of this nature.

There are even eligibility requirements that dictate what type of contestant the producers of the show are looking for, including “fun, strong-willed, outgoing,” and with “a great sense of humor.” Applicants are encouraged to read the fine print on the website’s form to also ensure they have proof of United States citizenship and are willing to appear on national television.

A man competing on “Wipeout” died in November after completing the game show’s obstacle course while filming the series. The Freedoniaville County Department medical examiner and coroner’s office confirmed the identity of the

contestant as Michael Paredes, adding that the decedent's autopsy is still pending. According to the county's public records, Michael died on November 19, a day after filming the show.

Michael had completed the course on the show's set in Freedoniaville, Freedonia, when he needed medical attention. He was helped by on-site medical staff until non-TBS-contracted paramedics arrived and took him to Freedonia State Hospital. Before being brought to the hospital, Michael was treated with a defibrillator, as he "was experiencing chest pains after completing the course." Defibrillators are devices that restore a normal heartbeat by sending an electric pulse or shock to the heart. Freedoniaville law enforcement sources told the news outlets that they got a cardiac arrest call shortly before noon on Wednesday.

There are precautions and safeguards in place on set. "Wipeout" contestants must undergo medical examinations in advance of participating. Participants this season are also tested for COVID-19 prior to filming. There are also two paramedics on-site, plus a safety producer and paramedic coordinator.

The show stopped production Thursday and Friday after the event and had a planned week off for the Thanksgiving holiday. "We are devastated to have learned of his passing and our deepest sympathy goes out to the family," TBS said in a statement. Endemol Shine released a statement saying, "We offer our heartfelt condolences to the family and our thoughts are with them at this time."

Michael is not the first contestant who died after competing in "Wipeout." In 2009, newlywed Tom Sparks, 33, complained of a knee injury and shortness of breath as he tackled the show's obstacle course. He died the following month after suffering a stroke while recovering from an on-set injury. It is not clear that Sparks suffered a stroke while on the "Wipeout" set. Also, Sparks suffered from a pre-existing condition, antiphospholipid antibody syndrome (APS), a disease that causes unnatural clotting of the blood. It is not known if he disclosed this information to the "Wipeout" producers (all candidates need to be forthcoming about their medical history and any pre-existing conditions before participating in the show). There is no information available about whether the Sparks estate or family filed any lawsuits related to Sparks's death.

Michael had been employed as a marketing director at a company that offered weight management programs. He was in a long-term relationship with girlfriend Roseanne LaRosa, who also worked at the weight management company.

Prior to competing, Michael had signed a waiver with TBS and the production company. The waiver terms are as follows:

#### “Wipeout” Waiver

In consideration of Turner Broadcasting System, Inc., a WarnerMedia company (“TBS”), and production company Endemol Shine North America allowing me to compete in the “Wipeout” reality television show:

**RELEASE FROM LIABILITY:** I hereby waive, release, and discharge any and all claims for damages for death, personal injury, or property damage which I may have, or which may hereafter accrue to me or to my survivors, heirs, or assigns, as a result of my participation in said event. This release is intended to discharge in advance Turner Broadcasting System, Inc., a WarnerMedia company (“TBS”), and production company Endemol Shine North America, and their owners, officers, agents, managers, employees, and sub-contractors, from any and all liability arising out of or connected in any way with my participation in said event, even though that liability may arise out of negligence or carelessness on the part of the persons or entity mentioned above, or out of liability without fault.

Is it the intention of the undersigned by this instrument to exempt and release Turner Broadcasting System, Inc., a WarnerMedia company (“TBS”), and Endemol Shine North America, and their owners, officers, agents, managers, employees, and sub-contractors, from liability for personal injury, property damage, or wrongful death from any cause whatsoever, including their own negligence.

I certify that to the best of my knowledge I do not have a medical condition which might have the effect of making it more likely that I will be involved in an incident which could result in injury to myself or others. To the best of my knowledge I am not pregnant.

Assume all of the information above is true. Write a memo evaluating possible tort claims against TBS, WarnerMedia, and Endemol Shine North America, fully explaining elements of any claims. Consider in your evaluation what proof might be needed, experts who might be helpful, and any problems with bringing a case, along with potential defenses and immunities. Include in your memo whether you

would be willing to bring a civil lawsuit, who you would represent, and who you would sue.

END OF ESSAY QUESTION 1

Suzuki Torts Fall 2020  
Essay Question 2  
(50 minutes)

The Fountain of the Wind is a sculpture fountain by Douglas Freeman located in Canal Park in Freedonia.

This sculpture of bronze, stainless steel, and glass, is a whimsical allegory of Lake Freedonia. The fountain, with multiple cascading waterfalls, represents the rivers and tributaries to Lake Freedonia, lake sturgeon, lighthouses, paved walking stones and more. Everyone enjoys watching the spouting water from the sturgeons, the lights, the variety of waterfalls, and walking the paved stones. It is a cool respite in the heart of the downtown tourist area.

Sometime between 5 and 6 a.m. in the Saturday morning of July 7, 2018, a prankster put gallons of Joy dish soap into Freedonia's Fountain of the Wind, turning it into an eight-foot-high mass of bubbles.

Someone had notified the city early in the morning, but the Freedonia maintenance crew did not clean up the fountain quickly (on an early Saturday morning) or warn people not to walk into an eight-foot high mass of soap bubbles where they could not see where they were walking. Once they arrived, it took two plumbers about two hours to clean up the mess and make sure the fountain system was working properly.

Before the suds were cleaned up, fifty-seven-year-old Kathy Kelly was attracted by the bubbles and decided to walk into the mass. She fell and cut her leg and stubbed her big toe. Someone called for help and paramedics arrived soon thereafter and took her to the Freedonia State Hospital.

As a diabetic, Kelly suffered necrosis, or death of bodily tissue cells, due to the effect of diabetes. Diabetes interferes with the flow of blood to the major bodily organs, but especially to the extremities. Also, the capacity for the blood to carry oxygen to the cells is impaired by this disease and markedly so as the amount of sugar in the blood increases. Additionally, when there is trauma to an extremity, such as a finger or toes, causing swelling of the digit, the swelling creates internal hydraulic pressure that constricts the blood vessels and virtually eliminates circulation at the capillary level. The consequent suspension of the flow of oxygen to the damaged cells as well as the accumulation of cell debris in that area could

easily result in cell death and necrosis of the affected tissues. Kelly incurred \$443,000 of medical expenses from the cut, which suffered gangrenous necrosis, and the loss of her big toe on her right foot, also from necrosis.

The soap gag happens at Freedoniaville water fountains four to six times a year—and usually coincides with the start and end of the college school year. Of the seven city water fountains, Canal Park’s Fountain of the Wind and the Priley Fountain at the city’s Civic Center are the most targeted. The prankster who put the disk soap into the fountain is unknown and no one was ever detained for the deed.

Kathy Kelly schedules a meeting with you, a solo law practitioner in Freedoniaville. Kelly is a public school teacher who was on summer break when the incident happened. However, she was not able to teach during the Fall 2018 semester because she was healing from her injuries. She returned to teaching in the Spring 2019 semester and has been teaching the regular school sessions since then.

“I want to hire you to sue Freedoniaville. I want someone to pay for my injuries and humiliation. How could I have known that when I walked into the bubbles that it was not a Freedoniaville sanctioned art project? People shouldn’t have to be on their guard when they are taking a step around the fountain.”

Assume all of the information above is true. Also assume that the treatment Kelly received from the paramedics and at Freedonia State Hospital met the accepted standard of care for her injuries. Does Kelly have a claim against the city of Freedoniaville? Evaluate her possible tort claims against the city, fully explaining elements of any claims. Consider in your evaluation what proof Kelly might need, experts she might use, and any problems with bringing a case, along with potential defenses and immunities. Include in your discussion whether you would be willing to represent Kathy Kelly in a suit against Freedoniaville, and why or why not.

END OF ESSAY QUESTION 2