

TORTS MIDTERM
EXAM
FALL 1999
PROFESSOR THOMAS MACK

A

This is a closed book exam; you may have no written materials anywhere near you. Do not write your name or otherwise identify yourself in any manner other than placing your exam number on each examination book. Number the books in sequence, (e.g., “one of three”, etc.).

I

Deb is driving her car when it is involved in an accident with a car driven by Abe. A few moments after the first crash, a car driven by Ann hits the two cars disabled from the first crash. Cal, a passenger in Abe’s car has a minor injury to his head from the first crash but serious injury to his knees and legs from Ann’s subsequent driving into the first crash.

Cal is taken to the hospital where Doctor informs him, correctly, that he will lose both legs unless he consents to an immediate particular type of surgery which may save his legs. The Doctor does not inform Cal that this type of surgery, if successful, will mean that his repaired knees will need artificial replacements within the next fifteen years. Cal, not knowing about the risk of knee replacement, agrees to the surgery, which Doctor performs but is not successful in saving his legs. Cal can never walk again. Also, Doctor accidentally leaves a metal clamp inside Cal’s leg after sewing the leg up. This clamp causes great pain until it is discovered and removed.

Cal files a negligence suit against Deb, Abe, Ann and the Doctor seeking a full judgment against each for his injuries. Assume each defendant owes a duty of reasonable care to Cal. Analyze whether or not Cal can prove each has breached his or her duty. If Cal can prove breach against one or more defendants, analyze whether such breach is a cause and proximate cause of Cal’s injuries. If the analysis of one defendant would be exactly the same as another, just say so. Don’t write out the same analysis twice.

II

Each of the questions or incomplete statements below is followed by four suggested answers or completions. You are to choose the best of the stated alternatives.

Question 1 is based on the following fact situation:

Mark, who owned an equipment rental business, rented one of his vans to Ryan. Sometime later Mark realized that the van that Ryan had taken was supposed to have gone into the shop to have its tie-rods checked because they were damaged when the van was driven into a culvert. Mark called Ryan’s office and spoke with Judy, his assistant, who promised to tell Ryan

to bring the van back and exchange it for another. However, Judy did not understand the significance of the problem, so she only told Ryan that Mark wanted him to trade vans.

Ryan decided to take the van back the following morning but to continue using it for that day. In the afternoon, he and Judy were in the van transporting a large number of very heavy cartons. As they were driving slowly through town Tim stepped off the curb without watching for on-coming traffic. Ryan had to quickly turn to avoid hitting Tim, and as he did so, the tie-rod broke and the van went out of control and crashed into a wall. Ryan and Judy were both injured.

1. Ryan sued Tim for his injuries. Ryan should:
 - (A) Not prevail, because his injuries were caused by the tie-rod breaking.
 - (B) Not prevail, because Mark's failure to take more reasonable steps shifted responsibility to Mark.
 - (C) Prevail, but only for a portion of his damages since Mark is also liable.
 - (D) Prevail, and recover for all his injuries.

Question 2-4 are based on the following fact situation:

Tri-City construction was building a high-rise apartment building in New Shire. During the course of its construction, the construction company found it convenient to build a long ramp from the first floor of the building to where the delivery trucks would park on the street. The ramp made it more convenient to wheel materials up to the construction site.

Although Tri-City had the construction site fenced off, a large portion of the ramp extended beyond the fenced-in area, and young children on the weekends would race their bicycles down the ramp.

One Sunday, as Trudy was coming home from the store, Sue, one of the children who was playing on the ramp, came riding down and rode right in front of her car. Trudy tried to stop in time, but when she slammed on the brakes, they failed, and her car hit the child.

Trudy normally takes her car for repair to Jules' Garage. Less than a month before the accident, her car had been thoroughly inspected.

Sue's parents brought suit against Trudy and Jules for the injuries caused to their child. At trial, Trudy's expert witness testified that at the rate of speed she was going she should have been able to avoid hitting the child if her car's brakes had been in good condition.

2. In suit against Tri-City, Sue's parents will:
 - (A) Not prevail, because Trudy was an intervening force which cut off Tri-City's liability.
 - (B) Not prevail, because Sue being hit by a car was not a foreseeable result of Tri-City's failure to fence off the ramp.
 - (C) Prevail, because dangerous construction requires a higher standard of care.

- (D) Prevail, because the ramp could have been enclosed.
3. Trudy might prevail against Sue's parents if she can prove:
- (A) She was driving within the speed limit when she hit Sue.
 - (B) Sue was trespassing on the ramp.
 - (C) She used reasonable care to insure her car was properly maintained.
 - (D) She had no prior knowledge that her brakes were defective.
4. In the action against Jules, Sue's parents most likely will:
- (A) Not prevail, if Jules is able to show that the car was inspected by a former employee whom he fired because of carelessness.
 - (B) Not prevail, if Jules can show that Trudy was speeding at the time of the accident.
 - (C) Prevail if Jules had not properly inspected the brakes in the car.
 - (D) Prevail, even if Jules had properly inspected the brakes, because automobiles are inherently dangerous instruments.

Question 5 is based on the following fact situation:

A loaned her car to her best friend B to use while B's car was in the shop for repairs. While B had the car, C, another friend of B's, borrowed the car and took it on a nine-hundred mile trip. While C was gone on the trip, A learned that B had lent the car to C. A was furious that B had done this without consulting A. C returned the car to B and B then attempted to return the car to A. However, A refused to accept the car even though it was undamaged, and sued B for conversion of the car.

5. Which of the following would be the most likely result of this suit?
- (A) A will not recover for conversion.
 - (B) A cannot recover for conversion, but can recover for trespass to chattel.
 - (C) A will recover the rental value of the car for the nine-hundred mile trip.
 - (D) A will recover the fair market value of the car from B.

Questions 6-7 are based on the following facts:

Tillie Taylor was a member of the Children of the Earth, a quasi-religious communal organization dedicated to the spiritual rebirth of its members, who devoted their lives to the preservation of the natural environment. During one of the organization's group encounter sessions, Raj Reel, the group's leader, who knew that Tillie was paranoid schizophrenic, accused Tillie of being disloyal to her fellow "brothers and sisters." Tillie's "disloyalty" stemmed from the fact that she had telephoned her parents in disobedience of the group's Code of Conduct. Ostracized from the group, Tillie fled the commune and returned to her parents home that evening.

After unsuccessfully trying to lure Tillie back to the group's movement, Raj decided to employ a "last ditch" effort to secure her return. Raj leased a billboard located across the street from Tillie's house. Raj had the billboard printed to read:

"TILLIE, THE CHILDREN OF THE EARTH COMMAND YOUR RETURN"

As a result of the billboard, Tillie suffered severe nervous shock and refused to leave her house, fearful that she would be abducted by her former "brothers and sisters."

6. As a result of the billboard, Tillie brings suit against Raj and the Children of the Earth for intentional infliction of emotional distress. Tillie will most likely:
 - (A) Succeed, because billboard was the cause in fact of mental suffering.
 - (B) Succeed, since Raj was aware of Tillie's mental instability in placing the billboard.
 - (C) Not succeed, since the billboard itself would not be outrageous in character.
 - (D) Not succeed, since the group only intended to secure Tillie's return.

7. In an action for false imprisonment against Raj, Tillie will most probably:
 - (A) Recover, since Tillie's confinement resulted from the implicit threat of the billboard.
 - (B) Not recover, because physical confinement is required.
 - (C) Nor recover since Raj did not intend for her to be confined in her home.
 - (D) Recover, using the doctrine of transferred intent.

Questions 8-9 are based on the following fact situation:

On the evening of February 9, 1978, Rudy Rum entered Pete's Pub, a bar owned by Pete Brandywine. Even though Rudy was already visibly intoxicated, Bob the bartender, served him five bourbons. Bob's actions were contrary to Pete's explicit directions to his bartenders, as well as in violation of a state statute making it a Class B misdemeanor to serve alcoholic beverages to any person who is visibly intoxicated. When Rudy left the Pub, he staggered to his auto, barely sober enough to get into the car and started driving home.

Rudy had driven only three blocks from the bar, weaving back and forth across the highway, when he collided with another car driven by Butch. As a result of the accident, Rudy suffered a broken nose and Butch received severe facial lacerations and bruises. Seeing the men lying on the edge of the highway bleeding profusely, a bystander summoned an ambulance which rushed Rudy and Butch to Holmdale Hospital.

After Rudy's nose was reset, he was transferred to a room in the west wing of the hospital. In extreme pain, Rudy asked Nurse Nancy for a pain killer. Nancy administered an injection of morphine which she should have known to be an excessive dosage. Rudy died an hour after the injection; cause of Rudy's death was morphine poisoning.

After Butch was treated for his facial wounds, an examination indicated that he had been, for some weeks, suffering from a hernia. Taking advantage of his hospitalization, Butch decided to undergo a hernia operation. As a result of a negligent surgical error, Steve, the surgeon, performed the routine operation unsuccessfully. Thus, following the surgery, Butch suffered an aggravation of the hernia condition.

8. In a personal injury action by Butch, which of the following defendants would be liable for the unsuccessful hernia operation/complications?
- (A) Bob the bartender and Pete Brandywine
 - (B) Executors of Rudy's estate
 - (C) Steve the surgeon
 - (D) All of the above
9. Bob the bartender's act of serving Rudy would most likely be viewed as the
- (A) Proximate cause of Butch's facial injuries
 - (B) Cause of unforeseeable facial injuries to Butch.
 - (C) Direct cause of Butch's facial injuries.
 - (D) Intervening cause of Butch's facial injuries.

Questions 10-11 are based on the following fact situation

John was walking along an unpaved road on his way to work. The road passed through a residential neighborhood with fine homes and lovely flower gardens. Suddenly, a truck coming in the opposite direction began to careen toward John; this was due to the fact that the bus driver, Mary, had momentarily lost control of the bus while attempting to light a cigarette. To avoid being hit by the bus, John jumped off the road into Rose's yard; unfortunately, he landed in a bed of prize-winning roses and damaged them extensively. In the process, John's wallet fell out of his pocket, although he didn't realize it at the time. John discovered the loss of his wallet that evening, and therefore returned the following day to look for it. On approaching Rose's property, he found that she had erected a large fence around her yard, with "No Trespassing" signs thereon. Rose's fence was over seven feet high, in violation of a city ordinance limiting the boundary line fences to a height of six feet. John carefully tore down one section of Rose's fence in order to get into her yard, and shortly thereafter found his wallet and left.

10. In a suit by Rose against John for the damages to her roses-
- (A) John should be held strictly liable for the entry upon Rose's land.
 - (B) Whether John is held liable depends on whether he was exercising due care.
 - (C) John should be held liable for damages to the roses on an intentional tort theory.
 - (D) John should be held liable for any damage to the roses as his entry was privileged.
11. In a suit by Rose against Mary, the bus driver, for the damages to her roses,

- (A) Mary may be held liable for trespass, to land because her driving caused John to enter onto Rose's land.
- (B) Mary may be held liable on the theory of negligence.
- (C) Rose would lose because it was unforeseeable that her negligent driving could indirectly damage anything in Rose's yard.
- (D) Rose would lose because John is the party liable for the roses.

Questions 12-13 are based on the following fact situation:

Two automobiles were involved in an intersection accident. One car was driven by Debby, who was unlicensed, only recently having learned how to drive; the other car was driven by Prescott, a world-famous racing driver. Prescott was seriously injured in the accident, and filed a lawsuit against Debby. Debby was represented by an insurance company lawyer who filed an answer on her behalf which included an assertion that Prescott was himself at fault in causing the accident.

After a lengthy trial, each side requested that the judge give certain rulings and instructions to the jury. In each case below indicate how the judge should respond to the request. (Assume that each is justified by the evidence.)

- 12. With respect to the fact that Debby had only recently learned how to drive, the judge should instruct the jury that –
 - (A) A beginner's lack of experience is taken into account on the question of whether he or she was exercising due care.
 - (B) A beginner's conduct is to be judged subjectively.
 - (C) Debby's lack of a license makes her negligent per se.
 - (D) Such evidence is irrelevant on the question of whether Debby was exercising reasonable care under the circumstances at the time of the accident.

- 13. If Prescott proves that Debby's car went through a stop sign without stopping, in violation of a statute, and ran into Prescott who was traveling on the main highway, the judge should instruct the jury that –
 - (A) This evidence by itself is irrelevant to any issue in the case because there was no showing that Debby was either cited or convicted of the violation.
 - (B) Debby's violation of the statute, if unexcused, constitutes negligence per se.
 - (C) Debby's violation of the statute is relevant to the issue of whether she breached any duty of care owed to Prescott.
 - (D) Debby's violation of the statute is irrelevant because of the differing standards of proof in criminal and civil cases.

Question 14 is based on the following fact situation:

There are two roads which run between Center City and Oak Town. One is a six-lane highway which runs across level ground and the other is a small two-lane winding road

which runs through the mountains. Although the highway takes longer most people prefer to travel the highway route because the mountain road is more dangerous.

Abner borrowed Drake's new car to drive from Center City to Oak Town and back. Drake specified that Abner should only drive the highway route to and from Oak Town. However, Abner was in a hurry and decided to take the mountain road. While driving back from Oak Town on the mountain road Abner, through no fault of his own, hit a pothole in the road which knocked the muffler off the car. The muffler can be replaced for \$50.00.

14. If Drake sues Abner, the likely result is that Abner is
- (A) Liable to Drake for the value of the car because Abner took a different route.
 - (B) Liable to Drake for the cost of replacing the muffler because Abner took a different route.
 - (C) Not liable to Drake because he intended no harm.
 - (D) Not liable to Drake because Abner was not at fault for hitting the pothole.

Questions 15-20 are based on the following fact situation.

John, a pedestrian, started north across the street in a clearly marked north-south crosswalk with the green traffic light in his favor. John was in a hurry, and so before reaching the north curb of the street, he cut to his left diagonally across the street to the east-west crosswalk and started to cross it. Just after reaching the east-west crosswalk, the traffic light turned green in his favor. He proceeded about five steps farther across the street to the west in the crosswalk when he was struck by a car approaching from his right which he thought would stop, but did not. The car was driven by Mary, 81 years of age, who failed to stop her car after seeing that the traffic light was red against her. John has a bone disease, resulting in very brittle bones, which is prevalent on only 0.02 percent of the population. As a result of the impact John suffered a broken leg.

John has filed suit against Mary. Mary's attorney has alleged that John violated a state statute requiring that pedestrians stay in the crosswalks, and that if John had not violated the statute he would have had to walk 25 feet more to reach the impact point and therefore would not have been at a place where he could have been hit by Mary. John's attorney ascertains that there is a statute as alleged by Mary, that her measurements are correct, that there is a state statute requiring observance of traffic lights, and that Mary's license expired two years prior to the collision.

15. In determining whether Mary was negligent, her conduct will be judged on the basis of
- (A) That of a reasonable 81-year-old person under the circumstances of this case
 - (B) An absolute liability standard
 - (C) That of a reasonable person under the circumstances of this case
 - (D) The standard set by the state traffic light statute, unless Mary has a valid excuse.

16. John's conduct in violation of the crosswalk statute
- (A) Would be held to be a concurring cause in fact of his injury.
 - (B) Would be held to be the sole cause in fact of his injury.
 - (C) Would be held to be a superceding intervening cause.
 - (D) Would not be regarded as having been a cause-in-fact of John's injuries.
17. John's conduct would be argued by Mary's attorney to constitute
- (A) Negligence per se
 - (B) A superceding cause
 - (C) Intentional misconduct
 - (D) Res ipsa loquitur
18. The violation of the crosswalk statute by John should not be held to be a breach of his duty of reasonable care because
- (A) Mary violated the traffic light statute at a later point in time than John's violation
 - (B) Pedestrians are entitled to assume that automobile drivers will obey the law
 - (C) John was hit while in the crosswalk
 - (D) Being hit while in a crosswalk was probably not the type of harm the statute was intended to prevent.
19. The failure of Mary to have a valid driver's license
- (A) Makes Mary liable to John because Mary is a trespasser on the highway
 - (B) Would not furnish a basis for liability
 - (C) Proves that Mary is an unfit driver in this instance
 - (D) Makes Mary liable for John's injury
20. If John establishes liability on the part of Mary for his physical injuries, should John's recovery include damages for a broken leg?
- (A) No, since only 0.02% of the population have bones as brittle as John's and therefore brittle bone damage is not foreseeable.
 - (B) No, unless a person of ordinary health would probably have suffered a broken leg from the impact.
 - (C) Yes, because Mary could foresee that there would be unforeseeable consequences of the impact.
 - (D) Yes, even though the extent of the injury was not a foreseeable consequence of the impact.

Question 21 is based on the following facts:

Abbot purchased a loaf of sealed Tastegood bread from grocer. The bread was made and sealed by Tastegood. Abbot removed some of the bread from the package and directly put it on a plate which he served to Edna who bit into it, seriously injuring herself by ingesting ground glass in the bread.

21. If Edna sues grocer on a negligence theory, the most likely result is that Edna will
- (A) Recover on a theory of *res ipsa loquitur*
 - (B) Recover because either grocer or Tastegood was negligent.
 - (C) Recover because of Summers v. Tice doctrine for shifting the burden of proof.
 - (D) Not recover.