

UNIVERSITY OF MISSOURI-COLUMBIA  
School of Law  
Torts §2

Final Examination

PART II  
ESSAY QUESTIONS

Mr. Fischer

December 15, 2004  
8:30 a.m.–12:30 p.m.

Instructions for Essay Questions

1. This portion of the examination consists of 3 essay questions and 4 pages (pages 1 through 4). Before you begin, check to see that you have all pages and that they are in the correct order.
2. You have 3 hours and 10 minutes for this part of the examination. You may allocate your time in any way you choose, but the time suggested for each question indicates its approximate weight.
3. Please use a pen, write legibly, and write on only one side of a bluebook page. Please number your pages and, if you use more than one bluebook, please number your bluebooks.
4. Read each question carefully. Assume that the events at issue took place in an unidentified American state. If you believe you need to know more information about the question in order to resolve an issue raised by the facts given, tell me what you need to know and how it would affect your analysis. Answer the questions based on majority, and if applicable, minority rules. Do not add facts to create issues not already raised by the facts given. Do not make implicit assumptions. Be sure to address all issues raised by the facts even if you think a single issue is dispositive. You are to assume that there is **no comparative negligence** unless the specific question informs you to the contrary.
5. Each answer should be self-contained. Thus, you should not “incorporate by reference” anything from one answer to another.

Essay I  
[40 minutes]

Peter Plaintiff took his son, Simon, to Dr. Don, their family doctor, to have Simon vaccinated for chicken pox. As a result of a citywide epidemic, the City Board of Health recommended that all persons who never had chicken pox be vaccinated. Peter told Dr. Don that he (Peter) did not have chicken pox as a child. Dr. Don recommended that Peter get vaccinated because the same virus that causes chicken pox in children can cause shingles, a painful affliction, in adults. Peter agreed, and Dr. Don vaccinated both Simon and Peter. As a result of the vaccination, Peter suffered a serious allergic reaction resulting in paralysis. It turns out that this type of allergic reaction is a rare, but normal, risk of this particular vaccine, occurring in approximately one out of every 500,000 vaccinations administered. Dr. Don, did not inform Peter Plaintiff of this risk prior to administering the vaccination.

Peter sues Dr. Don for negligently failing to obtain Peter's informed consent to the vaccination. Peter seeks compensation for his injuries. Evaluate Peter's claim against Dr. Don.

Essay II  
[65 Minutes]

Palmer was injured when his car swerved out of control and crashed into a telephone pole as Palmer attempted to avoid hitting a six-foot step ladder that fell onto the road in front of Palmer's car. Donna purchased the ladder from Elmer at Elmer's garage sale shortly before the accident. At Donna's request, Elmer tied the ladder to the roof rack of Donna's car so that Donna could take the ladder home with her. On her way home, Donna parked the car in a grocery store parking lot for 45 minutes while she went in the store to do some shopping. After returning to her car, Donna drove toward her home. While driving 30 miles per hour on a county road, the ladder detached from the roof rack and fell on the road behind her car. Palmer was driving his car a proper distance behind Donna's car when the ladder fell. Palmer took reasonable evasive measures, but was unable to maintain control of his car. Donna had no contact with the ladder or the twine prior to the accident, and she saw no other person tampering with it. At all times Donna drove her car at proper speeds and did nothing that would cause the ladder to come loose.

After the accident Donna stopped and observed that Palmer was trapped in his car. She offered to drive to a telephone and call for an ambulance and a rescue team. The nearest phone

was five minutes away. Palmer thanked Donna, and she drove off. Donna broke her promise and did not make the emergency call because she decided not to get involved. The next car to pass the accident scene came by 35 minutes later. The driver stopped and immediately telephoned for help on her cell phone. The rescue team responded to the call immediately, extracted Palmer from the car, and took him to a hospital emergency room where he was treated. If Donna had called the rescue team, Palmer would have received treatment 30 minutes earlier. The 30 minute delay significantly aggravated the injuries that Palmer received in the collision. It is not possible, however, to determine what injuries were due to the collision and what injuries were due to the 30 minute delay in treatment.

Palmer sues Donna and Elmer seeking recovery for all of his damages. Neither Donna nor Elmer assert the defense of contributory negligence against Palmer. Elmer will testify that he properly secured the ladder to Donna's roof rack with heavy duty twine, and the ladder could not have come loose unless the twine had been tampered with.

Evaluate Palmer's claims against Donna and Elmer.

### Essay III [80 Minutes]

Potts brings an action against Dobbs for negligently causing Potts' house to collapse. The house was constructed primarily of concrete blocks. Dobbs manufactured one-half of the concrete blocks for the house, and Potts made the other half of the concrete blocks. The house collapse was initiated by the shock waves of a sonic boom caused by a jet airplane that exceeded the speed of sound as it passed very low over the house. The sonic waves caused some of the concrete blocks to crumble under the weight of the house. The loss of support resulting from the crumbling blocks caused the weight of the house to shift sufficiently to cause the entire building to collapse. The low flying airplane was operating in flagrant violation of Federal Aviation Administration rules specifying the permissible altitude and airspeed of airplanes in the vicinity of Potts' house. It is impossible to identify either the plane or the pilot.

Experts have examined the debris and concluded that all of the concrete blocks in the house were defectively manufactured and subject to crumbling when placed under normal stress. The sonic boom precipitated the crumbling of the blocks, but, without the sonic boom, the house would have eventually collapsed because of its own weight.

The concrete blocks were defective because they were made with an improper ratio of

cement to sand and gravel. Coincidentally, both Potts and Dobbs made their concrete blocks from the same recipe, a recipe that they separately obtained from the Internet. Neither Potts nor Dobbs conducted routine testing with a block crushing machine that would have disclosed that the blocks produced by the recipe were of inadequate strength. It is impossible to determine who made the concrete blocks that crumbled.

Potts is an amateur builder. He built the house himself. He made half of the concrete blocks himself in order to save money. He did not test them on a block crushing machine because he neither owned nor had access to such a machine. Potts did not consider purchasing a block crushing machine because they are very expensive.

Dobbs is in the concrete block manufacturing business. She tried the Internet recipe because it reduced her manufacturing costs, and she had no reason to believe that it would produce blocks of insufficient strength. She owns a block crushing machine, but did not test the blocks that she sold to Potts because the machine was out of order. It was being repaired at the time she made the blocks for Potts. Dobbs suspended all testing while the machine was being repaired.

Potts' negligence action against Dobbs is brought in a 49 percent-type ("is less than") comparative negligence jurisdiction. Dobbs asserts in defense that Potts was comparatively negligent.

A) What arguments will Potts make in the lawsuit both with respect to his negligence claim and with respect to Dobbs' defense of comparative negligence?

B) What arguments will Dobbs make in the lawsuit both with respect to Potts' negligence claim and with respect to Dobbs' defense of comparative negligence?