

UNIVERSITY OF MISSOURI-COLUMBIA  
School of Law  
Torts §2

Final Examination

PART I  
ESSAY QUESTIONS

Mr. Fischer

December 13, 2005  
1:00 PM–5:00 PM

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 2 hours 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]**

Pat, a young woman of child-bearing age, consulted a doctor after experiencing pain in her left breast, in which she also discovered a lump. The doctor referred her for a sonogram of her breast, the results of which revealed a mass in her left breast consisting of a complex cyst containing a mural nodule. On her doctor's advice, Pat consulted a surgeon, Dr. Diane, who suggested a biopsy due to the possibility of malignancy. With Pat's consent, Dr. Diane initially attempted to remove fluid from the cyst for the biopsy sample with a needle. After an initial attempt, Dr. Diane determined Pat was too tender for her to obtain a sample with a needle without significant discomfort. She determined the best way to proceed was to surgically remove the solid nodule.

In preparation for the surgery, Dr. Diane informed Pat of numerous risks involved, including post-operative infection. Pat consented to the expected procedure, "excision breast mass left."

During the surgical procedure, the cyst and some surrounding tissue were removed, and some of the Pat's milk ducts were cut. The effect of severing the milk ducts would be to restrict the flow of milk to the nipple if lactation were to occur. Thus, if Pat chose to bear a child in the future, her ability to breast feed the child would be somewhat impaired due to the restricted flow of milk to the nipple. According to Dr. Diane, "the breast is composed of milk ducts, and milk ducts inevitably get cut when you do incision." Prior to the operation Dr. Diane did not tell Pat anything about the necessity of, or the effect of, severing milk ducts. The tissue biopsy showed the mass was benign. No further treatment was necessary.

Pat has filed an action against Dr. Diane. The complaint contains two counts, one for medical negligence and the other for battery. Both counts are based on Dr. Diane having cut the milk ducts without authorization. There is no evidence that the operation was unnecessary, was conducted carelessly, or that Dr. Diane could have performed the operation without cutting the milk ducts. Dr. Diane has an expert who will testify that prior to performing this operation surgeons do not routinely inform patients about the necessity of, or the effect of, severing milk ducts because the effect is minor compared to the other risks of the operation, and warning about too many risks tends to make patients unnecessarily nervous. Pat has no history of being unusually nervous.

Pat has no children, and has not decided whether she will have children in the future. She says she is a firm believer in breast feeding, and she would have insisted the tissue sample be taken with the needle (no matter how uncomfortable) if she had known the surgery would have impaired her ability to breast feed.

How do you think the case will be resolved? Fully discuss the reasons for your conclusions.

**Essay II**  
**[30 minutes]**

A city water main broke and discharged water onto a public court adjacent to property separately owned by Paul and Debby. Paul, to prevent water running from the court, which was higher than his property, onto his property, made an earthen embankment six or eight inches high. The embankment blocked the water, caused it to accumulate on the court until the water reached a level where it began to drain on Debby's property. To prevent this drainage, Debby took a shovel and broke through Paul's earthen embankment. This stopped the drainage onto Debby's property before any damage was done, but caused the water to drain onto Paul's property where it caused some minor damage.

Paul sues Debby for the damage. How do you think the case will be resolved? Fully discuss the reasons for your conclusions.

**Essay III**  
**[50 minutes]**

On April 29, 2003, employees of the Southern Bell Telephone Company placed a telephone wire on the ground, across the driveway and front yard of Able's residence. The wire was to provide phone service to Able's brother-in-law (Baker), who lived in a house trailer next door to Able. The line was to be buried or placed on poles, but nothing was done to alter the location of the line for eleven days prior to the incident described below. Southern Bell did not ask for or obtain Able's permission to lay this telephone line on the ground or across Able's driveway and yard in any manner before doing so. The line was charged with electricity, and presented a risk of causing electric shock to people coming into contact with it. No person was actually shocked by the line.

On May 9, 2003, Able's son, Ricky, 17 years of age, and Baker's son, Elton, were mowing Able's lawn. Earlier in the day Able's wife had left their house in the car and gone to work. While mowing the yard, the two boys lifted the wire from the ground and placed part of it over the limb of a tree, suspending it about two to three feet above the driveway and over it. About thirty minutes after this occurred, and between 6:00 and 7:00 P.M., Able's wife was returning home. Able who had been in the backyard came into the front yard and saw his wife approaching and also saw the line hanging from the tree. In order to protect the two boys and his wife from the risk of being struck by the telephone wire, Able ran to pull the line down. At about the time he grabbed the line, the car driven by his wife hit the line. The line threw Able onto his front porch where he landed on Baker, who was sitting on the porch swing. Both Able and Baker were injured as a result. During the time the line was on the ground, prior to the alleged accident, Able and his wife had no difficulty in driving into and out of their driveway. Able had no prior knowledge that the boys raised the line off the ground until he saw it as his wife approached, and Southern Bell had no knowledge of the line being raised off the ground at any time prior to the alleged accident.

### **Part A**

Able sues Southern Bell seeking recovery of compensation for his injuries. How do you think the case will be decided? Fully discuss the reasons for your conclusions.

### **Part B**

Baker sues Able seeking recovery of compensation for his injuries. How do you think the case will be decided? Fully discuss the reasons for your conclusions.