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## PART II ESSAY

(suggested time 1 ½ to 2 ½ hours)

Although it was now a housing development dense with the homes of young families, a generation ago it was farm land. The farms had been mostly dairy cattle, but a few raised and boarded horses. Some conflicts had arisen between the high-spirited horses and the ever-hungry cows: the cows would wander into the horse pastures to eat the grass and upset the horses so that they ran in circles, often injuring their legs. When the horses escaped their paddock and galloped through the cow pastures, it frightened the cows whose milk production dropped. Several local court cases and ordinances established liability for wandering cows and horses. Together, they required that the "owner be in attendance with any animal when not on the owner's land, and that the owner be in control of the said animal."

As a fundraiser, the local humane society would rent ponies for children to ride.

One year a family that had bought a fairly large lot that still had a horse barn standing on it, rented a pony (a party favorite named Slewfoot), through this program for a child's fifth birthday party. They arranged for the pony to arrive the day before and stay overnight in the barn so the child would be completely surprised the next morning.

Indeed, everyone was surprised the next morning. Two boys, Agamemnon aged 14 and Brutus, 16, had seen the pony being delivered. Although the family had locked the barn door, the lock was very old and rusty, and the teens had no trouble in breaking it off; however, Brutus did get a nasty cut on his hand for his trouble.

Having watched lots of television, the teens just assumed they knew how to ride (even bareback). They led the pony out of the stall without trouble, but when Brutus tried to climb on Slewfoot's back, the pony was startled and backed into Agmemnon, crushing

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his foot. Now Brutus had a cut hand and Agamemnon was unable to walk without great pain, so the teens decided to have Agamemnon ride for medical care on the pony's back. Slewfoot, being accustomed only to its handler and small children, was no more fond of this rider than of the efforts of the first.

Agamemnon managed to get on the pony's back, but he found he could not control the pony. Instead of riding it to the nearest medical aid unit as planned, the pony took off wildly, kicking Brutus & breaking his (the teen's, not the pony's) leg. The pony then threw off the (would-be) rider, leaving Agamemnon badly shaken (and still with a crushed foot).

The pony kept running for a while, right through the middle of a group made up mostly of children (many of whom would be at the birthday party later) but also some adults who had collected up to see the pony. Some of the onlookers were actually run into by the pony; others just stood in horrified surprise as their friends narrowly escaped being trampled by the frightened, run-away pony.

Finally, Harris, the pony's handler, showed up for the party. Instead of the pony in the stall, of course, he found Brutus with a broken leg hollering something about "that ferocious wild beast" and "where was Agamemnon?"

Things were not going well for Agamemnon. One of the collected crowd had seen him thrown and arranged to get him to the hospital. There Agamemnon was told that the cut was so severe his hand really needed to be amputated. He refused because he planned to be a major league pitcher.

You are the judge for all the tort suits that arise from these facts. How and why will you decide each?