

ESSAY 1 (80 minutes)

Proust was hired by Dennis as a potato harvester. One of his duties required that he occasionally unclog the potato harvester on which he worked. The harvester was manufactured by Spudco. Spudco also manufactured a "multiple spud picker" attachment which Dennis purchased and installed. The procedure for unclogging the machine was made clear by safety warning signs on the harvester. Like its competitors, the harvester had no shield to prevent objects or hands from being thrust up into the machine. Earlier models with shield had been rejected by harvesters because they damaged the potatoes. Proust was unfamiliar with the equipment, or the process of harvesting potatoes. He neither spoke nor read English. Dennis, who spoke no French, demonstrated how to unclog the harvester using a stick. Proust nodded and seemed to comprehend the demonstration.

Dennis operated the harvester himself. At the time of the accident, the machine clogged, and, in a mixture of English and sign language, Dennis directed Proust to descend from the top of the harvester to unclog the machine. Proust had cleared some of the obstruction when, without warning, the machine started, mangling Proust's right hand and fingers. Contrary to the written warnings and Dennis' demonstration, Proust had been using his hand to unclog the digger chain. Dennis, who was alone in the cab at the time of the accident denies engaging the harvester motor. There is some evidence that too much force on the digger chain can cause it to turn too rapidly, but no evidence that pressure on the chain can cause the harvester to start.

Dennis did not immediately run to aid Proust. He later said that he was shocked and frightened by the sight of so much blood that he couldn't think of what to do. Engle, who owns the adjacent field, heard Proust's screams. He ran from his field, jumped over the fence between the two properties, and ran through a pile of harvested potatoes to get to Proust. Proust, dazed by the pain and mistakenly thinking that Engle was going to hurt him, ran away from Engle. In the process Proust tripped on a potato, fell and fractured his left toe. Engle finally reached him and immediately made a tourniquet out of his own shirt, which he applied to Proust's upper arm. Proust's arm eventually had to be amputated. Later medical evidence indicated that if the tourniquet had been properly applied at Proust's wrist, he would have recovered. Engle was so distraught after the incident that he has been having nightmares in which he sees the bloody hand and is unable to save Proust. His lack of sleep has left him irritable, distracted and depressed.

The Occupational Safety and Health Act (OSHA) in the jurisdiction was "designed to assure all workers in State safe and healthful working conditions." State OSHA regulations further provide "At the time of their initial employment and at least annually thereafter the employer shall instruct every employee in the safe operation and servicing of all equipment with which the employee will be involved, and shall employ these practices himself. At least the following safe practices should be covered and practiced:..... 2) make sure everyone is clear of the machine before starting the engine, engaging power or operating the machine."

Please identify and discuss all potential claims arising from this incident.

ESSAY 2 (60 minutes)

E. Coli outbreak prompts concerns over juice safety

Washington (AP)- Alarmed by another *Escherichia coli* outbreak that killed a child and sickened others in Western states, the government is considering forcing all apple juices - and possibly other fruit juices - to be pasteurized.

Also under debate are measures such as chemically washing fresh produce or forcing manufacturers to adopt programs that prove foods stay pure from harvest to dinner table.

The deliberations come after many people, mostly children, were sickened from *E. coli* that may have come from unpasteurized fruit juices. The particular strain of *E. coli* can cause hemolytic uremic syndrome, the leading cause of kidney failure in children, which can cause death in the most extreme cases. The bacteria are usually found in the manure of animals like cows. The pathogens can be eliminated by washing produce thoroughly, or by boiling or pasteurizing.

Once thought a threat only in undercooked meat, the virulent *E. coli* strain now has surfaced repeatedly in apple cider, and even in lettuce. Health officials were not alarmed until early November when Odwalla Inc., recalled its gourmet fruit juices. The evidence that Odwalla juices were responsible for the illnesses is not completely conclusive; about 60% of those who became ill said they drank an Odwalla product. One of the largest natural-juice producers in the country, Odwalla passed FDA plant inspections and even had its own special quality control programs. No *E. coli* bacteria were discovered when investigators examined the plant after the outbreak, but some inadequacies in the plant's sanitation system were uncovered. No conclusions have been made about the relationship of these problems to the *E. coli* outbreak. Odwalla products are marketed primarily in health food and gourmet stores, and its juices are popular with individuals who want minimally processed foods without chemical additives.

It is unclear how Odwalla's juices were tainted. One possibility is that Odwalla inadvertently bought apples that had dropped from orchard trees into cow or deer feces. Another is that a worker could have handled food apples with dirty hands.

You have been retained by the family of a child severely sickened by *E. coli*. The parents believe Odwalla juice to be the cause of their child's kidney failure. Discuss possible claims and assess the likelihood of succeeding.

(Report taken primarily from AMA News, Dec. 2, 1996, with supplementation from NY Times, Nov. 20, 1996)

MULTIPLE CHOICE (20 minutes)
(There are 7 multiple choice questions)

Question 1

Jack Logan climbed up a 34,000 volt power line and threatened to electrocute himself. While Logan was on top of the pole, the City Police Chief directed the electric company to turn off the city's major power line, so Logan would not be harmed by the current. As a result, the intersection at 147th Street and Bulk Avenue was left without traffic signals and streetlights. Michael Folds, a seventeen year old with a newly acquired driver's license, was driving about 10 miles above the speed limit, and failed to slow down at the intersection as required by state law. He proceeded through the intersection without stopping and collided with Angela Abel. Folds' passenger, his friend Perry Paul, was injured in the accident.

In a suit against City and the Police Chief, it is most likely that Paul will be:

- A. Successful, because the power outage was a direct cause of the accident.
- B. Successful under a theory of joint and several liability .
- C. Unsuccessful because the power outage was not the proximate cause of the accident.
- D. Unsuccessful because no duty was owed to Paul by the City or Police Chief.

Question 2

If Perry Paul sues Michael Folds for recovery for the injuries he sustained in the accident, in a jurisdiction which still has a guest statute,

- A. Paul will not recover because the driver was merely negligent.
- B. Paul will not recover because he did not pay for the ride.
- C. Both answers A and B.
- D. Paul will recover because Folds owed a duty to protect his passenger.

Question 3

General Hospital informed Pendel's doctor that Pendel had tested positive for HIV. Following standard practice in the field, Dr. Denton informed Pendel of the results, and referred her to an infectious disease specialist. The specialist tested Pendel's blood and discovered she was not HIV positive. After her blood tested negative for a second time, she sued Dr. Denton. Pendel will most likely:

- A. Win on a theory of negligent infliction of emotional distress.
- B. Win on a theory of intentional infliction of emotional distress.
- C. Lose because Pendel was not in a zone of danger as a result of the incorrect diagnosis.
- D. Lose because General Hospital was at fault for the incorrect diagnosis.

Question 4

Pierre is a patron of the Velodrome Bike Racing Palace and was injured when his bike crashed through a guard rail. He was not wearing a helmet at the time of the accident. He sued the Velodrome for negligent grading of the track and for faulty installation of protective barriers.

The jury finds Pierre's damages to be \$100,000 and finds the Velodrome 40% at fault and Pierre 60% at fault. In a jurisdiction which has adopted a pure negligence approach:

- A. Pierre would not recover because he was more than 50% responsible for his injuries.
- B. Pierre would not recover because the Velodrome entrance ticket waives liability for all accidents in the track area.
- C. Pierre would recover \$100,000.
- D. Pierre would recover \$40,000.

Question 5

Farmer wanted to practice his branding technique before branding his head of steer. He took his brand and heated it until it was red hot. He thrust the brand into a haystack at the imaginary spot where he would place a brand on a steer. Unbeknownst to him, his farmhand Packer, on a break from chores, was sleeping under the hay. Packer's leg was permanently branded, and, in addition, he suffered from an infection. When Packer sues Farmer for battery, what result?

- A. No liability because Farmer intended no harm.
- B. No liability because Packer should not have been sleeping under the hay.
- C. Liability because Packer sustained serious injury.
- D. Liability because Farmer intended to place the brand in the hay and Packer was injured.

Question 6

If Packer had lapsed into unconsciousness after the accidental branding,

- A. Farmer would not be negligent if he failed to get help because the branding was not his fault.
- B. Farmer would not be negligent if he failed to get help because Packer was an employee.
- C. Farmer would be negligent if he failed to get help because the injury resulted from his actions.
- D. Farmer would be negligent if he failed to get help because the injury resulted from grossly negligent conduct.

Question 7

Randi, rollerblading to work in the bike/blade lane on the right shoulder of the road, is hit from behind by Dara, who was operating a large construction vehicle, and was not paying attention as she backed out of a driveway where construction was ongoing. Randi was thrown into the air and broke her arm when she landed. She landed in an intersection and was hit by Erin, who went through a stop sign without stopping. Randi's arm was further fractured, and she suffered internal injuries from the car hitting her. In a suit against Dara and Erin, Randi will most likely be successful under a theory of joint and several liability for:

- A. The injuries to her arm.
- B. The internal injuries she suffered.
- C. Both A and B.
- D. None of the injuries she sustained.

End of Exam
Have a good vacation!