MJ Torts Final December 4, 2001

- 1. Please use ink. Pencil really does smear. Felt tip pens, even the "razor point" ones are very difficult to read, especially since you will be writing quickly.
- 2. Treatment of intentional tort claims: In the essay, omit discussion of intentional torts beyond pointing out that you recognize the potential cause of action. I need to know only that you can distinguish intentional misconduct from negligent.

Remember that your essays are graded on HOW you reach your result, not on what result you reach. Accordingly, I do not give credit for anything that you can memorize until you have used it in connection with these facts, nor do I give credit for unsupported conclusions. I can also only give credit for material covered in this course, even if you are knowledgeable about a topic from some other source.

The facts given should be treated as proved. You may not ignore them (e.g., disregard them as too difficult to prove). You may not change them or add to them (= you may not write your own question). You may request additional facts if you explain how that information affects your reasoning.

It is NOT an answer to say, "It would be up to the jury to decide." HOW should the jury decide and why? What arguments should the jury take into account? (You wouldn't tell a jury, "OK, it's up to you," without telling them why they should find for your client, would you???)

If contributory negligence arises, assign percentages of fault that can later be translated into amounts for recovery based on the particulars of the local comparative negligence statute. You do not need to assign any dollar amounts.

Directions for turning it all in

In addition to signing the Honor Code form, fill in the number of exam books and other items you are putting in the envelope. Because the Honor Code has your name on it, DO NOT put it inside the envelope, but put it in the separate stack for them. The second copy of the Honor Code is your "receipt" for having turned in your exam, so take it with you.

Timing

You have four hours for the exam; however, it is not designed to be a four-hour exam. If you finish in less time than that, do not torment yourself trying to imagine issues that you overlooked.

You're a veteran law school exam-taker now, so take it all in stride.

In Torts, you can always just BE REASONABLE!

EXAMINATION BEGINS ON THE NEXT PAGE

PLEASE DO NOT TURN THE PAGE UNTIL TOLD TO DO SO

The holidays were nice, but Grandma was just plain tired, and she wanted to go home. She did not like to drive after dark (especially after hearing on the radio about a grandmother who was run over by a reindeer on her way home). She couldn't really ask one of her children (adult) children to drive her; they were SO busy, and they would pooh-pooh her eagerness to get back to peace and quiet anyway.

The obvious choice to ask was her granddaughter Kitty. Kitty had just gotten an "A" in her high school driving course. Grandma was unaware that Kitty still needed to go downtown and pass the state's test to get her license; how could she get an "A" in driving if she didn't even have a license??

Kitty was thrilled at the opportunity to drive, er, I mean, she was delighted to be able to be so helpful to her beloved grandmother. Kitty was responsible, and she realized half-way to Grandma's house that they needed gas. She pulled up with the driver's side (where the tank was) next to the pumps, this is, in between the two sets of pumps. No one really knows why Grandma got out of the car. She opened the passenger door, got out, and stood there for a minute looking a little confused.

Just then a group of party-goers, *en route* from one party to another, roared away from a pump somewhere behind Kitty. They plowed right into the opened passenger door. Kitty looked on in horror as her grandmother was crushed between the car door and the party car. (She was worried about a number of things, including whether her father would ground her until she was 25.) She managed to call 911 before calling her parents.

The owner of the gas station also witnesses the event. A gentle man, in between his spells of vomiting, he moved Grandma to more dignified position; he also got the license plate number of the party car that had since driven away.

The ambulance arrived about the same time Kitty's father did. On his way to call a tow truck for his car, he slipped in one of the puddles of the station-owner's vomit and broke his arm. The ambulance personnel found nothing about Grandma to revive; at the hospital she was announced dead on arrival.

Discuss the potential suits and probable outcomes that could be filed by each party. Remember this is not a criminal law exam, so any crimes are only important to the extent that they help solve tort law questions.