TORTS - FINAL EXAM

Fall 2000

Professor Susan Goldberg

Instructions

This is a three hour closed book exam. No outside materials are permitted in the exam.

There are three parts to this exam. The first part consists of 20 multiple choice questions. Use the scantron sheet for your answers. Use a pencil to fill in the circle completely. I have allocated 60 minutes for the multiple choice questions.

The second part of the test consists of one short answer question. The suggested time for completion of this question is 30 minutes.

The final portion of the exam is a 90 minute essay question. Read the question completely before starting your answer. I strongly urge you to take some time to organize your thoughts and outline your answer before you begin to write your response.

Please use only one side of the blue book page for your answers.

When you have completed your exam, place all of your exam materials, <u>including the exam</u>, into the accompanying envelope and seal it before bringing it to me. Your completed honor code sheet should be filled out, signed and returned to me separately from your exam.

Have a great vacation!

Multiple Choice Questions (One Hour) - There are 20 multiple choice questions. Choose the best answer. Mark the grid sheet circle completely, and erase any stray marks.

Questions 1 through 3 deal with the following fact pattern.

Paul, a roofer who has been retired for 10 years, has been seeing a physician for nearly a year. He has experienced chest pains, coughing and shortness of breath. After a long set of diagnostic tests, the physician has diagnosed Paul with asbestosis, a condition which is often a pre-cursor to lung cancer. The condition is defined as "a lung disease, a form of pneumoconiosis, caused by fibers of asbestos inhaled by those who are exposed to large amounts of the mineral." The condition most likely resulted from Paul's handling of asbestos shingles over the course of this thirty years in the roofing business.

1. In a jurisdiction with a two-year statute of limitations on tort suits of this kind, if Paul seeks to sue his employer and the manufacturer of the shingles and the suit is allowed to go forward it is most likely because:

   A. The jurisdiction follows the date of last exposure rule.

   B. The jurisdiction tolls the statute of limitations when there is physician negligence.

   C. The jurisdiction follows the discovery rule.

   D. The jurisdiction follows the accrual rule.

2. Paul sues for negligent infliction of emotional distress in a jurisdiction which requires the Plaintiff to be in the zone of danger or suffer physical harm. Paul now knows that his long exposure to asbestos has led him to be at increased risk of developing cancer. If the supplier is subject to liability to Paul for damages in strict products liability, should the award include damages for distress?

   A. Yes, because the supplier of a dangerous product is always strictly liable for all harm caused.

   B. Yes, because Paul can show his distress stems from bodily harm due to his exposure.

   C. No, because his distress was not the cause of his asbestosis.

   D. No, unless the jurisdiction recognizes a new cause of action for increased risk of cancer.

Questions 3 and 4 are based on the following facts.

Pam worked at a factory which made saxophones. Pam's job was to burnish the finished saxophones and to place them on a rack. Pam has been employed for five years. Six months ago the company replaced the racks upon which the saxophones were hung. The new racks contained a peg rather than several hooks. Pam complained that the new racks were unsafe because vibrations from other equipment caused the saxophones to shift and sometimes fall off the racks. The employer told Pam to use the racks or quit her job.

A week after complaining to the manager, Pam was hit on the head by a falling saxophone and injured. No negligence of other employees was involved.

3. In a jurisdiction which found for the employer, which of the following facts would be most significant to the court:

   A. The accident did not happen as a result of negligence by other employees.

   B. Pam knew that the saxophones were likely to fall.

   C. The plaintiff signed a contract assuming the risk of injury.

   D. The new racks were unsafe.

4. In what situation would this case serve as the most relevant precedent:

   A. The plaintiff smelled alcohol on the breath of defendant, but got in the car with defendant anyway, and was injured when defendant was in an accident due to his intoxication.

   B. The plaintiff is a minor employed by defendant, and was injured by continuously inhaling toxic fumes in the workplace.

   C. The plaintiff, a guest of an employee in the workplace, was injured by a defective door, which when opened, hit the wall where clocks were hung, causing a clock to fall on the plaintiff.

   D. The plaintiff was an employee who was injured when another employee threw a saxophone at his supervisor, missed and hit plaintiff instead.

5. Dino drives a bread delivery truck. When Dino went to deliver bread to the corner store, he parked illegally, too close to the intersection. Perry, driving 10 miles over the speed limit, skidded into the bread truck while trying to turn at the intersection. Perry has sued Dino to recover for the injuries sustained in the accident. The jurisdiction has adopted a pure comparative negligence approach. In this action, Perry should recover:

   A. Nothing because Dino was not the last actor involved in negligent conduct.

   B. Nothing if Dino was less negligent than Perry.

   C. His entire loss, reduced by the percentage that reflects the negligence attributable to Perry.

   D. His entire loss because Dino violated a statute.

6. Darlene pulled into a handicapped parking spot to run into the drugstore to fill a prescription for allergy medicine. She was in violation of a city ordinance prohibiting parking in the space except by vehicles properly displaying a handicap license plate or sticker. Sal, driving carelessly, sideswiped Darlene's car as she pulled into Paulo's driveway. Paulo, a passenger in Darlene's car, was injured in the collision. If Paulo sues Darlene to recover for his injuries, basing his claim on Darlene's violation of the handicap parking ordinance, which is the most likely result?

   A. Paulo will succeed because Darlene was negligent per se.

   B. Paulo will succeed because Darlene was the cause in fact of Paulo's injuries.

   C. Paulo will not succeed because Sal's negligence superceded Darlene's negligence.

   D. Paulo will not succeed if prevention of traffic accidents was not a purpose of the ordinance.

7. Dr. Dennis was on line for a "cheese steak lite" at Pat's Steaks when Perry, another patron, began to choke on a piece of food. Dr. Dennis did not want to lose her place in line, and turned her back on Perry, despite her knowledge of the proper medical procedures to remove obstructions from the throat. After a few minutes a cook ran out to assist Perry. If Perry sues for injuries suffered as a result of the delay in receiving assistance, the most likely result will be:

   A. Recovery because Dennis could have assisted Perry at no inconvenience to herself.

   B. Recovery if the jurisdiction gives immunity to physicians for malpractice rendered during an emergency.

   C. No recovery unless the jurisdiction has adopted a gross negligence standard.

   D. No recovery because Perry owed no duty to Dennis.

Questions 8 through 10

Pilar, a twelve-year old girl, lives a mile from a private recycling center. In addition to glass, metal and newspaper recycling, the center allowed batteries and toxic solvents to be deposited at the far corner of the premises for transferral to a proper disposal site on specified dates during the year. While the center had posted signs forbidding disposal of these items at other times, workers were aware that drop offs occurred at other times.

Pilar's parents had warned her to stay away from the Recycling Center because it was dangerous. One summer day, a bored and barefooted Pilar decided to explore the center, which she knew was the location for parties held by adventurous middle school kids.

8. In walking next to a pile of batteries and other containers that had been deposited in violation of the posted sign, Pilar's skin was burned by caustic chemicals leaking from a plastic bucket.
In determining whether the Recycling Center would be liable for Pilar's injuries, which fact is least important:

   A. Pilar's parents had warned her not to go to the Recycling Center.

   B. The Recycling Center knew batteries and toxic solvents were deposited at times other than those posted.

   C. Pilar had a child's capacity to understand the dangers present.

   D. The Recycling Center knew children played on the premises.

9. Which of the following is most important in deciding whether the Recycling Center owed Pilar a duty:

   A. Whether the recycling plant could have prevented the harm without undue hardship.

   B. Whether the site had valid permits for operation.

   C. Whether the injuries Pilar received occurred in a manner typical for these types of solvents.

   D. Whether the Recycling Center had discovered Pilar as a trespasser.

Questions 11 and 12 are based on the following fact pattern:

On a rainy night, Diane was traveling in the middle lane of the highway within the speed limit, and conscientiously staying a good distance behind the car in front of her. Suddenly, a car swerved in front of the car ahead of her, and that driver, Pat, slammed on her brakes. Diane plowed into the back of Pat's vehicle. Pat was injured in the accident.

11. If the jury was given the emergency doctrine instruction which of the following is true:

    A. The defendant has a lower standard of care toward plaintiff than ordinarily.

    B. The defendant can not be found liable to plaintiff.

    C. The defendant will be held to the same standard of care as other reasonable people under the circumstances.

    D. The defendant will have her liability reduced because the plaintiff created the emergency.

12. If Diane was following too close to Pat and skidded on a patch of ice when Pat slammed on her brakes, which of the following is the most likely result:

    A. Diane will not be liable because the ice was an intervening cause.

    B. Diane will not be liable because the emergency superceded any negligence on her part.

    C. Diane will not be liable if she was unaware of the existence of the ordinance.

    D. Diane will not be liable if the accident would have occurred even if she had not been in violation of the statute.

Questions 13 through 18 are all based on the following fact pattern.

Sally, age 15, loved to roller blade. Neither of her parents enjoyed the sport, and both had been injured at various times when roller blading with Sally. As a result, in the winter they would drop her off at Roller Rink and return for her two hours later. Roller Rink has a sign displayed above the cashier's window which states the following:

> "Unaccompanied children are not permitted at the Rink past 6:00 p.m. on school nights in accordance with State General Statute §7.14 Rollerblades may be brought into the facility only if the manager approves; otherwise, skates must be rented at a cost of $2.00 per session."

Sally was dropped off by her parents at 5:30 p.m. The manager would not allow her to bring in her rollerblades because the wheels were very scratched. She rented skates and began to practice her routines. About an hour into her practice, Sally's left wheel locked as she went over an unvarnished patch of flooring which covered a small portion of the rink. She attempted to use the brake on her right rollerblade to slow her down by pressing on the toe of her right foot, but the brake did not operate properly because the brake and toe clip were improperly aligned as a result of a malformation of the metal forming the brake. As a result, Sally twisted her leg, fell forward and broke her arm.

In attempting to slow down to aid Sally, Saul, a novice rollerblader, also hit the spot on the floor where the finish was unvarnished. He did not react gracefully or skillfully and careened into Betty. He sustained a concussion and a laceration on his face as a result. When Saul went to the emergency room to have the laceration sutured, the physician used too large a needle and the stitches later created an unsightly scar on his face, which required additional cosmetic surgery.

13. In a response to Sally's lawsuit for injuries sustained at Roller Rink, the defendant, Roller Rink, claimed Sally's violation of statute precluded her from recovering. If Sally seeks to rebut Roller Rink's claim her best argument would be:

    A. Sally is not within the class of persons to be protected by the statute.

    B. The type of injury Sally sustained is not the type the statute was designed to prevent.

    C. Both A and B.

    D. Roller Rink owed her a heightened duty because she was a minor.

14. In a suit by Saul against Roller Rink:

    A. Saul will recover because he is a rescuer.

    B. Saul will recover because the Roller Rink was grossly negligent.

    C. Saul will not recover because his lack of expertise in rescuing could not have been foreseeable to Roller Rink.

    D. Saul will not recover because his lack of expertise in rescuing was the superceding cause of his injury.

15. In Saul's suit against Roller Rink, he claims as damages the cost of the additional cosmetic surgery necessitated by the emergency room physician's failure to use the correct needle. The most correct outcome will be:

    A. Saul will not recover because his scarring was an unforeseeable "egg shell plaintiff" reaction.

    B. Saul will not recover because the negligence of the physician was a separate and superceding injury.

    C. Saul will recover because Roller Rink was a proximate cause of the need for the surgery.

    D. Saul will recover because Roller Rink was the sole cause in fact of the need for the surgery.

16. In a suit against the Manufacturer of the Rollerblades, which of the following is the easiest premise for Sally to recover upon:

A. A design flaw.

B. A manufacturing defect.

C. A failure to warn.

D. Negligence.

17. If Sally sues Roller Rink and Manufacturer under a theory of joint and several liability, a verdict in her favor would most likely be based upon:

A. The indivisible nature of her injuries.

B. Concerted action by the defendants.

C. Fault on the part of one defendant but an inability to determine which defendant was at fault.

D. Strict liability for abnormally dangerous activities.

18. As Sally hobbled dazedly off the surface of the rink, she opened a door marked "Employees Only" and went to sit on a bench she saw positioned against the wall. The bench was wobbly, and one of the legs was no longer attached to the base. It collapsed when Sally sat down, pitching her forward onto the concrete floor. If Sally does not recover for this additional injury, is it most likely because it has been determined that in this jurisdiction:

A. She is a trespasser.

B. She assumed the risk when she walked through the door.

C. She is an invitee.

D. The Roller Rink met its duty of reasonable care toward her.

Questions 19 and 20 are based on the same fact pattern.

Paul purchased a gourmet automatic coffee grinder and maker. This combination machine would allow him to grind his own coffee beans and then brew the perfect cup of coffee. The grinder operated by activation of a button on the top of the lid. Paul poured the beans into the grinder and pushed the button. He released the button when he thought the beans were sufficiently ground to make a good strong cup of coffee. When Paul lifted the lid he saw the blades had not stopped, and grabbed the cord to pull the plug out of the electrical socket as the coffee grounds flew around the kitchen. Paul received a shock as he pulled the plug out of the socket.

19. If Paul seeks to recover against the manufacturer for the shock he received, the most likely outcome is:

    A. Recovery based on an information defect.

    B. Recovery because there was a design defect and his misuse was foreseeable.

    C. No recovery because of assumption of risk when he unplugged the machine.

    D. No recovery because he misused the product.

20. Four hours later Paul's friend Pia entered the kitchen. She saw coffee grounds on the floor in front of her, but continued to walk toward the refrigerator. She slipped on the coffee grounds and fell.

    If Pia sues Paul for her injuries, his failure to sweep up the grounds will be relevant with regard to:

    A. Whether he owed her a duty.

    B. Whether he breached the duty.

    C. Whether his act or omission was the cause in fact of her injuries.

    D. Whether his act or omission was the proximate cause of her injuries.

Part II - 30 minutes - Policy Question

Throughout the semester we have discussed the tension between the system's attempt to provide bright line rules and the desire to have flexible standards to ensure justice and fairness. Choose one tort doctrine we have discussed and explain how this tension plays out. Give examples and assess whether the doctrine achieves its goal or should be changed.

Part III - 90 minutes - Essay

Alice, along with her sisters Penni and Pam, were at the City Arena to see "Ice Stars on Ice." The Arena was a multi-purposed building which was also the home of the local ice hockey team. Alice had won the tickets from a local radio station by correctly identifying all of the lawsuits in the presidential contest. They had ringside seats and joked that in contrast to their usual "nosebleed" seats, at ringside they were close enough to "see the sweat" and get cold from the ice. They were enjoying the first performer when the skater executed a finish with a flourish in front of them. As the ice sprayed over them Penni screamed in pain. A tiny piece of gravel had been sprayed along with the ice and had hit her in the eye, scratching her cornea. She was taken to the first aid station where her eye was bandaged by an employee, Ned Noone. She missed almost the first half of the performance but returned before the intermission. Inspection of the ice afterwards found numerous gravel pieces on the floor. The Zamboni used by Arena was manufactured by ZZ Enterprises. The Zamboni had recently been used to resurface an outdoor skating rink owned by Arena and the manager speculated the gravel was brought in that way.

During the intermission Alice went to get a hot drink and some food for Penni, a diabetic who needed to eat at regular intervals and who had not had her usual snack because of her eye injury. Penni did not feel comfortable being seen walking around the arena with the patch on her eye. Food and drinks were sold from push carts on the concourse level. After waiting in line, Alice made her purchases and began the walk back to her seat, passing the pushcarts on her way. Each cart had a "door" or "window" made of wood and measuring approximately 4 feet by 6 feet by 3/4 inches on either side which allowed the stand to be closed up when not in use. The wooden "door" was attached to the top edge of the stand and was opened when the cart was in use. When opened, the lower edge of the door was swung toward the ceiling and the small end of a hook attached to the ceiling was inserted into the metal eyelet attached to the door.

attention to it would have reduced the likelihood of permanent damage.

The following information may be relevant to your inquiry:

1. The jurisdiction has retained the traditional status distinctions for duties of landowners to entrants upon the land.

2. The jurisdiction has judicially adopted a pure comparative approach for evaluating the effect of the plaintiff's conduct on the ability to recover in a negligence suit.

3. The jurisdiction has adopted a multi-factored approach to emotional harms similar to that adopted by the California court in Thing v. LaChusa.

4. On the back of the tickets for the event was the following language:

> "Warning and Notice of Restricted License
>
> Pucks flying into spectator areas can cause serious injury. Be alert when in spectator areas. If injured, notify usher for directions to medical station.
> Ticket Holder assumes all risks and danger of personal injury and all other hazards arising from or related in any way to, the event for which this ticket is issued, whether occurring prior to, during or after the event, including, specifically (but not exclusively) the danger of being injured by hockey pucks and sticks, other spectators or players or by thrown objects.
> Ticket Holder agrees that Arena Limited Partnership, the players, officers, agents and employees are expressly released by Ticket Holder from claims arising from or in any way related to foregoing causes."

5. A city ordinance reads as follows:

> "For all contact sporting events held at Arena, protective barriers must be in place in front of ring side seating."

Discuss the claims which can be raised by Alice, Penni and Pam. Analyze defenses which might be raised and assess the likelihood of recovery in each suit.