

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2022**

QUESTION 1 (40 POINTS)

Logan loaded his dog into his car and drove to a nearby river levee. Once Logan got to the levee, he realized he forgot his dog's leash. However, he thought his dog would be okay since the levee was far away from a road and cars. Logan hoped that running around at the top of the levee would help with his dog's aggression. His dog has been increasingly aggressive over the last month. Just yesterday, his dog had again bitten Logan's arm when Logan was feeding him.

As Logan and his dog neared the top of the levee, the dog ran straight towards a small child. Logan's good friend Melissa and her 24-year old daughter Vickie were also at the levee. Vickie was worried that the dog would attack the small child because she had previously seen the dog bite Logan during feeding time. So Vickie jumped in front of the dog, poked him with her walking stick and began waiving a treat at the dog. The dog immediately attacked Vickie and mangled her ear and almost tore it off. Vickie's mom, Melissa, watched in horror as the dog viciously attacked her daughter. Melissa immediately jumped into action, picked up the walking stick and began hitting the dog. While swinging wildly at the dog, Melissa also hit Logan with the stick, breaking his nose. Melissa was extremely distraught from the whole experience. Melissa had nightmares about the dog attack for months. Melissa also began seeking treatment with a mental health counselor for increased anxiety.

Please answer the following three subquestions. The subquestions in Question 1 are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

- 1.1 What theory or theories of liability, other than general negligence, might Vickie reasonably assert against Logan; what defense(s) might Logan reasonably raise; and which party is likely to prevail? Explain fully. (20 points)**
- 1.2 What theory or theories of liability might Melissa reasonably assert against Logan, and is Melissa likely to prevail? Explain fully. (10 points)**
- 1.3 What theory or theories of liability might Logan reasonably assert against Melissa; what defense(s) might Melissa reasonably raise; and which party is likely to prevail? Explain fully. (10 points)**

[End of Question 1]

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QUESTION 2 (40 POINTS)

For Question 2, please consider the facts described in Question 1, as well as the following additional facts:

Minutes after Logan’s dog bit Vickie, Vickie was transferred to Lake Hospital, where she then had emergency surgery on her ear. Dr. Shaw, who was a new doctor with operating privileges at Lake Hospital but was not an employee of Lake Hospital, operated on Vickie’s ear. Vickie signed a form consenting to the surgery. It listed several possible risks of surgery. One of the known risks was permanent hearing loss. During the procedure, Dr. Shaw grabbed the wrong instrument (i.e., one that was too large for the procedure) and pierced Vickie’s ear drum causing permanent hearing loss.

A nurse, Debbie, was employed by Lake Hospital to take care of Vickie after the operation. Nurse Debbie was exhausted because she had been out late at a bar the night before and was in no mood for an overly needy patient. Nervous and anxious from being in the hospital, Vickie kept buzzing Nurse Debbie for the smallest things. Because these interruptions were pushing Nurse Debbie behind in being able to look after her other patients, Nurse Debbie felt like Vickie needed a very extended nap. So Nurse Debbie gave Vickie a poisonous “sleepy time cocktail” that Nurse Debbie sometimes made special for her annoying patients to make sure they would fall asleep. Nurse Debbie had read that the combination of ingredients could cause permanent injury, but she had previously given it to other patients who fell asleep but always woke up unharmed. That night, because of the “cocktail,” Vickie had a stroke. As a result, Vickie suffered permanent paralysis to the left side of her body. Contrary to hospital policy, Nurse Debbie did not document on Vickie’s hospital records that she gave Vickie this cocktail.

At the time of these events, Dr. Shaw, Lake Hospital and Nurse Debbie were all qualified health care providers.

Vickie’s roommate, Emmy, was very sad about Vickie’s injuries. She hated to see her friend in pain. Vickie also could not work after the surgery. Emmy relied on Vickie to pay half of the rent and utilities.

Please answer the following four subquestions. The subquestions in Question 2 are not weighted equally. Explain each answer; an answer without explanation will receive no credit.

- 2.1 What theory or theories of liability might Vickie reasonably assert against Dr. Shaw; what defense(s) might Dr. Shaw reasonably raise; and which party is likely to prevail? Explain fully. (15 points)**
- 2.2 What theory or theories of liability might Vickie reasonably assert against Nurse Debbie; what defense(s) might Nurse Debbie raise; and which party is likely to prevail? Explain fully. (10 points)**
- 2.3 Assume for this Question 2.3 that neither Nurse Debbie nor Lake Hospital was a qualified health care provider. What theory or theories of liability might Vickie reasonably assert against Lake Hospital for Nurse Debbie’s actions; what defense(s) might Lake Hospital raise; and which party is likely to prevail? Explain fully. (8 points)**
- 2.4 Assume for this Question 2.4 that neither Dr. Shaw nor Nurse Debbie nor Lake Hospital was a qualified health care provider. What theory or theories of liability might Emmy reasonably assert against Dr. Shaw, Lake Hospital and Nurse Debbie; what defense(s) might they reasonably raise; and which party is likely to prevail? Explain fully. (7 points)**

[End of Question 2]

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**LOUISIANA STATE BAR EXAMINATION
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JULY 2022**

QUESTION 3 (20 POINTS)

Each of the following ten multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1 Providers of alcohol
- 3.2 La. Merchant Liability
- 3.3 Workers' compensation
- 3.4 Acts of others and things in custody
- 3.5 Defamation
- 3.6 Invasion of privacy
- 3.7 Survival action; rank of designated beneficiaries
- 3.8 Comparative fault
- 3.9 Self-defense
- 3.10 Products liability

[End of Question 3]

END OF TORTS TEST

**LOUISIANA STATE BAR EXAMINATION
TORTS
FEBRUARY 2022**

QUESTION 1 (40 POINTS)

After a recent hurricane, there was a lot of work to do in Jackson City to get the city back to pre-storm status. XYZ Debris Removal obtained a large contract with Jackson City to perform recovery efforts after the hurricane. But XYZ did not have enough drivers to conduct debris removal in Jackson City, so XYZ contracted with ABC Trucking to perform some of the debris removal jobs. XYZ and ABC entered into a contract where they agreed that XYZ was the “statutory employer” of ABC employees and that ABC employees would be performing work that was “integral” to XYZ’s ability to fulfill its contract with Jackson City.

Kennedy, an employee for XYZ, had been reprimanded several times for texting while driving on the job. Such conduct is a direct violation of XYZ rules. Two weeks before the hurricane, Kennedy got in an accident because she was texting while driving an XYZ vehicle. XYZ placed her on probation and prohibited her from driving for the company for a month. Before the month was up, the hurricane hit. XYZ needed all hands on deck and thus allowed Kennedy to resume driving for XYZ again before her probationary period ended.

A week after XYZ and ABC entered into their contract, Myles was driving his truck on the same street as Kennedy. Myles noticed that Kennedy was texting on her phone while she was driving an XYZ truck. Kennedy stopped her XYZ truck and began picking up debris. When Kennedy finished picking up debris on the street, she began backing up her truck, traveling 30 mph, while she was also looking down at her phone. The posted speed limit is 15 mph. Myles was stopped behind Kennedy and could see that Kennedy was going to back into his truck. Myles quickly jumped out of his truck and ran backwards a few feet away from his truck. While running backwards, Myles tripped and fell on a large crack in a sidewalk. Myles immediately experienced pain in his neck, shoulders, and his right hand. Kennedy hit Myles’s truck and totaled it, but Kennedy never physically hit Myles.

- 1.1. What theory or theories of liability might Myles reasonably assert against Kennedy; what defense(s) might Kennedy reasonably raise; what damages are potentially recoverable; and which party is likely to prevail? (20 points)**
- 1.2. *For Question 1.2 only, assume that Myles is an ABC Trucking driver and was picking up debris at the time of this incident.* What theory or theories of liability might Myles reasonably assert against XYZ; what defense(s) might XYZ reasonably raise; what damages are potentially recoverable; and which party is likely to prevail? (20 points)**

[End of Question 1]

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**LOUISIANA STATE BAR EXAMINATION
TORTS
FEBRUARY 2022**

QUESTION 2 (40 POINTS)

Angelica walked into 123 General store to pick up diapers for her daughter. 123 General was a mess. There were unpacked boxes in the middle of the floor. 123 General had a lot of customers, but had only one employee working that day. As Angelica walked down the aisles, trying to avoid the mess, she turned the corner and tripped on an empty crate that was left on the end of the aisle. Angelica broke her leg in the fall. She did not see the crate before she fell. The crate was low lying and was the same color as the floor. The crate had been left there by a customer 10 minutes before Angelica fell. When Angelica reported her fall to the 123 General employee, the employee stated, “Again? I have been meaning to move that. It has just been so busy.”

After 123 General refused to offer to pay for Angelica’s medical bills, Angelica took to social media, stating “123 General is a Fraud. They are Cheats and Liars. They refuse to help me and my family even though they know they hurt me.” Angelica’s post went viral and was shared over 10,000 times. 123 General feared this would severely damage its family-friendly brand. 123 General immediately hired a PR team to deal with the bad press. The PR team ran a “smear campaign” attacking Angelica for her previous check fraud felony conviction. Angelica’s employer fired her immediately.

Angelica’s husband Ryan is so sad about Angelica’s injuries. He hates to see his wife in pain. He also relied on her to help him clean the house, take care of the kids and pay the bills. Since the fall, despite applying for three different jobs, Angelica has not been able to find new employment. Each company to which Angelica applied stated she could not be hired while she is actively receiving treatment for her injuries.

What theory or theories of liability might reasonably be asserted in each of the following actions; what defense(s) might reasonably be raised; what damages are potentially recoverable; and which party is likely to prevail?

- 2.1. Angelica v. 123 General (30 points)**
- 2.2. Ryan v. 123 General (5 points)**
- 2.3. 123 General v. Angelica (5 points)**

[End of Question 2]

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**LOUISIANA STATE BAR EXAMINATION
TORTS
FEBRUARY 2022**

QUESTION 3 (20 POINTS)

Each of the following multiple choice items counts for 2 points. Select the letter that corresponds to the correct answer.

- 3.1. Medical malpractice
- 3.2. Providers of alcohol
- 3.3. Conflict of laws; products liability
- 3.4. Negligent entrustment
- 3.5. Self-defense
- 3.6. Survival action; rank of designated beneficiaries
- 3.7. Punitive damages for tort claims
- 3.8. Invasion of privacy
- 3.9. Assault
- 3.10. Strict liability for dogs

[End of Question 3]

[END OF TORTS TEST]

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2021**

QUESTION 1 (100 POINTS)

David was driving his Trailmaker All-Terrain Vehicle (“Trailmaker”) on unpaved roads on hunting land, trying to get back to his camp before dark. David’s friend, Patrick, was in the passenger seat of the Trailmaker. Patrick’s son, Sam, was in the rear seat of the Trailmaker. It had rained the previous two days. As the sun was going down, the road was becoming slick, and it was becoming difficult to see where the Trailmaker was going. Patrick insisted on talking loudly and joking around by putting his hand in front of David’s face and grabbing David’s arm. David was trying to concentrate on the road and sternly asked Patrick to be quiet and to stop joking around.

Patrick then began arguing with David about the way David spoke to him; Patrick also continued to poke David, saying that David was being too serious. This argument distracted David, who then lost control of the Trailmaker. Although David stepped on the brakes, he was unable to slow down and smashed the Trailmaker into a tree.

David broke his leg in the crash. Patrick was thrown from the Trailmaker and was impaled on a nearby fencepost. Patrick initially survived the impact, but bled out and died from the crash before help could arrive. Sam walked away from the crash but continues to be severely affected by his father’s death.

The Trailmaker was manufactured by ABC ATV, Inc., which knew that the brakes of certain Trailmaker models tended to fail if the brakes got wet. All Trailmaker models were subject to a recall for faulty brakes. Recall notices were mailed to all Trailmaker owners, including David. The notice did not specify the exact problem and instructed owners to contact ABC ATV, Inc. for further information. David read the notice but threw it away and never contacted ABC ATV, Inc. for further information.

What theory or theories of liability might reasonably be asserted in each of the following actions, what defenses can reasonably be raised, and which party is likely to prevail?

- 1.1 David vs. Patrick’s estate (25 pts)**
- 1.2 Sam (as Patrick’s heir) vs. David (20 pts)**
- 1.3 Sam (for his own damages) vs. David (19 pts)**
- 1.4 David/Sam vs. ABC ATV, Inc. (36 pts)**

[End of Torts Test]

**LOUISIANA STATE BAR EXAMINATION
TORTS
FEBRUARY 2021**

QUESTION 1 (100 POINTS)

Dorothy invited her next-door neighbor Patty to come over for a cup of tea. On the way to Dorothy's house, Patty did not use the sidewalks, but instead walked through a gap in the bushes along the side of Dorothy's yard and then through Dorothy's flower bed to cut across Dorothy's lawn. To step into the flower bed, Patty had to step over a rope that was hanging along the bushes about two feet off the ground. As she was crossing the flower bed, Patty stepped on a piece of metal that was sticking about two inches out of the ground; this piece of metal pierced through one of her toes.

For several years, Dorothy had an irrigation system that watered her grass and flowers and used the services of ABC Lawn Service to maintain her grass and flowers. A few months ago, ABC Lawn had noticed that flowers in the flower bed were being trampled by foot traffic; thus, with Dorothy's approval and to discourage persons from walking in the flower beds, it strung around the flower bed and bushes the rope that Patty later stepped over. Two weeks before Patty's visit and unbeknownst to Dorothy, ABC Lawn Service had damaged the irrigation system and left a piece of metal from the irrigation system sticking out of the ground in the flower bed next to the bushes. This is the same piece of metal that pierced Patty's toe.

Patty went to a hospital for treatment for her toe injury. Patty was in extreme pain and was traumatized at the thought that she may lose her toe. While at the hospital, Patty contracted a highly contagious and deadly infection that had been spreading in the hospital. The infection led to her being hospitalized for two weeks where she suffered a great deal of pain, and then led to her death. The hospital knew that Patty's infection was very contagious; indeed, four of Nurse Terry's co-workers had recently contracted the same infection, although it was still undetermined how those co-workers had contracted the infection. Nonetheless, the hospital forced Nurse Terry to treat Patty anyway. Nurse Terry also contracted the same infection while employed by the hospital and treating Patty. Although she did not die, Nurse Terry was bed-ridden for three months from the infection.

Patty is survived by her husband, Hank, and her son, Sam.

What theory or theories of liability might reasonably be asserted in each of the following actions, what defenses should reasonably be raised, and what party is likely to prevail?

- 1.1 Hank and Sam v. ABC Lawn Service (40 points)**
- 1.2 Hank and Sam v. Dorothy (20 points)**
- 1.3 Hank and Sam v. the hospital (20 points)**
- 1.4 Nurse Terry v. the hospital (20 points)**

[End of Torts Exam]

**LOUISIANA STATE BAR EXAMINATION
TORTS
OCTOBER 2020**

QUESTION 1 (100 POINTS)

One morning, Darryl was driving eastbound on Market Street and was approaching the intersection with Second Street. The intersection of Market Street and Second Street had four stop signs, one for the vehicles approaching the intersection from each direction.

Pearl was driving north on Second Street approaching the intersection with Market Street. She slowed down as she approached the intersection. But seeing no cars at the other three stop signs, she did not come to a complete stop at her stop sign and instead drove through the intersection at a slow speed.

Darryl did not see his stop sign and ran through his stop sign at around 30 miles per hour. Pearl did not see Darryl's vehicle until it collided with her vehicle.

Both cars received substantial damage. Darryl was uninjured. By contrast, Pearl was taken to the hospital with severe injuries to the left side of her body, including a fractured wrist on her left arm. Pearl was treated by a surgeon, Dr. Smith, at the hospital. Dr. Smith operated on Pearl's right wrist instead of her left wrist.

While operating on Pearl's right wrist, Dr. Smith dropped the scalpel and the scalpel landed in the top of Nurse Jones' foot. Nurse Jones' foot injury caused Nurse Jones to miss months of work. Both Dr. Smith and Nurse Jones are employees of the hospital.

What theory or theories of liability might reasonably be asserted in each of the following actions; what defenses can reasonably be raised, and which party is likely to prevail?

- | | | |
|------------|--|--------------------|
| 1.1 | Pearl v. Darryl | (33 points) |
| 1.2 | Darryl v. Pearl | (16 points) |
| 1.3 | Pearl v. Dr. Smith | (33 points) |
| 1.4 | Nurse Jones v. the hospital for Dr. Smith's actions | (18 points) |

Explain each fully.

[End of Torts Exam]

**LOUISIANA STATE BAR EXAMINATION
TORTS
AUGUST 2020**

QUESTION 1 (100 POINTS)

One evening shortly after sunset, David was driving on Main Street and was approaching the intersection with First Street. David's wife, Susan, was a passenger in the vehicle, and they were talking to each other the whole time. The intersection of Main Street and First Street had a stop sign for the vehicles, such as David's, approaching from Main Street.

To minimize glare, David recently had a plastic windshield visor installed at the top of his truck windshield. The visor was manufactured and installed by Glare, Inc. The visor was darker than a legal window tint and had a low profile. The shade and location of the visor made vision of some objects difficult, particularly after the sun went down. The visor came with a pamphlet that stated: "The contrast of objects seen through the visor is lessened in lower light."

Patty was driving north on First Street approaching the intersection with Main Street. There is a flashing yellow light on First Street at the intersection with Main Street.

David did not see the stop sign and ran through the stop sign. Patty did not slow down for the flashing yellow light at the intersection of First Street and Main Street.

The two vehicles collided. David was thrown from the truck and initially survived the impact but suffered major pain and injuries and died from the crash a week later. Susan walked away from the crash without any physical injuries but continues to be mentally affected by the accident and David's death. Patty suffered a broken back and arm, and her van was totaled.

- 1.1 What theory or theories of liability might reasonably be asserted in each of the following actions, what defenses can reasonably be raised, and which party is likely to prevail? Fully explain. (80 points)**
- (a) Patty v. David (25 points)**
 - (b) Susan (for her own damages) vs. Patty (19 points)**
 - (c) Susan vs. Glare, Inc. (36 points)**
- 1.2 What claims might be asserted, and what damages might be recovered, against Patty by Susan in her capacity as David's heir? Fully explain. (20 points)**

[End of Torts Test]