

**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]

**LOUISIANA STATE BAR EXAMINATION
TORTS
FEBRUARY 2020**

QUESTION 1 – 40 POINTS

Patty has a 13-year-old daughter, Vicky. Patty and Vicky are emotionally close to one another. They live next door to Nancy and her daughter Deborah, who is also 13 years old.

The two children were playing atop a hill at a park across the street from their homes. The playing became violent. The children were pushing each other back and forth. While pushing each other, Deborah pushed Vicky, who fell backwards and tumbled down the hill. Vicky's leg and ankle were severely injured. When Deborah pushed Vicky, Deborah did not intend for Vicky to fall.

After the fall, Vicky screamed for her mother. Patty heard Vicky's screams and ran to the park where she found Vicky lying at the bottom of the hill, crying. Patty saw Vicky's leg and ankle were severely injured with multiple bruises and brush burns. Patty carried Vicky home. Patty had a tube of "Earth's Healing Ointment" in a first aid kit. After cleaning Vicky's wounds, Patty applied the ointment on Vicky's leg and ankle. The ointment severely irritated the brush burns that covered Vicky's leg and ankle. The irritation from the ointment led to a serious infection that began to spread up Vicky's leg. Vicky's doctors informed Vicky and her mother that Vicky's leg may have to be amputated at the knee if they could not successfully treat the infection.

The ointment was manufactured by ACME Ointment Co. The backside of the tube of ointment read: "Warning – do not use on sensitive areas."

Patty now suffers from post-traumatic stress disorder (PTSD) as a result of witnessing her daughter's leg injury. Patty and Vicky's relationship has become extremely difficult since Vicky's injury, as Vicky requires care around the clock.

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? Explain each fully.

- 1.1 Vicky (through her tutor) v. Deborah (through her tutor) (14 points)**
- 1.2 Vicky (through her tutor) v. ACME Ointment Co. (14 points)**
- 1.3 Patty v. Deborah (through her tutor) (8 points)**
- 1.4 Patty v. Nancy (4 points)**

[End of Question 1]

**LOUISIANA STATE BAR EXAMINATION
TORTS
FEBRUARY 2020**

QUESTION 2 – 40 POINTS

The infection of Vicky's ankle and leg persisted, and one night Vicky completely lost feeling in the foot of her injured leg. Vicky was rushed to the hospital, where the doctors determined Vicky would have to have her injured leg amputated at the knee. Vicky went into surgery. The nurses identified the wrong leg as the one that needed treatment. The surgeon did not read the records before the surgery and amputated the wrong lower leg. The hospital does not employ the surgeon but employs all of the nurses who work at the hospital. During the surgery, a nurse dropped the scalpel, which sliced off the tip of another nurse's finger.

When Patty returned home from the hospital, she was angry at her next door neighbor, Nancy, because of the injuries to Vicky. Patty constructed a machine that wafts her sewer odors into Nancy's home. Nancy began to suffer severe migraines from the noxious fumes.

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? Explain each fully.

- 2.1 Vicky (through her tutor) v. Surgeon (13 points)**
- 2.2 Vicky (through here tutor) v. Hospital (10 points)**
- 2.3 Injured Nurse v. Hospital (10 points)**
- 2.4 Nancy v. Patty (7 points)**

[End of Question 2]

**LOUISIANA STATE BAR EXAMINATION
TORTS
FEBRUARY 2020**

QUESTION 3 – 20 POINTS

The following subject matters were tested in this multiple choice section:

Battery
Beneficiaries for a survival action
Comparative fault
Conflict of laws; products liability
Defamation
Merchant liability
Premises liability
Self-defense
Strict liability for animals
Tortious interference with a contract

[End of Question 3]

END OF TORTS TEST

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2019**

QUESTION 1 -- 40 POINTS

Tommy was a clerk at the Corner Gas Station and Food Store. Tommy worked for Management, Inc., the company that managed the store. The store was owned by BigBoss Co.

The store was in a high crime area. In recent months, there had been several widely publicized incidents of gun violence occurring in and around the store. Nonetheless, BigBoss Co. kept the store open 24 hours a day. The store did not have security cameras. The store did not require customers to conduct business through a bullet proof window or through a drawer at any time of night.

One night at 1:00 am, while Tommy was working at the store as the clerk, alone without other employees, Bad Guy came into the store; flashing a gun in his hand, he immediately barked at Tommy to turn over to him all the cash in the cash register. Momentarily distracted when a customer in the rear of the store let out a loud gasp at hearing Bad Guy's demands to Tommy, Bad Guy turned away from Tommy and towards the customer. Management, Inc. had specifically instructed all its employees to avoid attempting heroics involving an armed person. But Tommy ignored those instructions; instead, as soon as Bad Guy turned his head, Tommy jumped over the counter separating Bad Guy from Tommy in an attempt to tackle Bad Guy. But Bad Guy kept his grip on his gun and shot Tommy, who was instantly killed by the bullet.

- 1.1. What claim(s), if any, might Tommy's heirs reasonably assert? Explain fully.**
- 1.2. 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? Explain each fully.**
 - (a) Tommy's heirs vs. Management, Inc.**
 - (b) Tommy's heirs vs. BigBoss Co.**
 - (c) Tommy's heirs vs. Bad Guy**

[End of Question 1]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
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JULY 2019**

QUESTION 2 -- 40 POINTS

Bonnie regularly shops at Everything Store. As Bonnie was walking down the produce aisle one day, she saw a banana on the ground in the distance. Bonnie stopped to speak with the produce clerk and forgot about the banana. As Bonnie began to walk again, Bonnie slipped on the banana and injured her right knee.

The bananas at Everything Store were stored in a Banana Holder manufactured by Banana Holder, Inc. The Banana Holder stated on the side of the container: "Guaranteed to hold your bananas." The banana that Bonnie slipped on had been on the floor about a foot away from the Banana Holder, which upon inspection shortly after Bonnie's fall did not appear to have been damaged in any way.

Everything Store has an employee inspect each store aisle every three hours for any spilled items on the floor. The last such inspection had occurred about two hours before Bonnie fell. In the meanwhile, over seventy customers had passed through the store, including a handful who had purchased other bananas that had been in the same Banana Holder. This amount of customer traffic flow through the store was fairly typical for the store.

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? Explain each fully.

2.1. Bonnie v. Everything Store

2.2. Bonnie v. Banana Holder, Inc.

Following the slip and fall, Bonnie was taken to a local hospital. Bonnie underwent surgery at the hospital. A surgeon operated on Bonnie's left knee. This was the first operation this surgeon, Dr. Smith, conducted without another surgeon in the room. A few minutes before the surgery, the head surgeon for the hospital had volunteered to be present in the operating room during the surgery, but Dr. Smith declined the offer and stated: "I'll be fine; I need to get comfortable operating without someone looking over my shoulder all the time." During the operation, Bonnie suffered a stroke that has adversely affected her speech. A nurse employed by the hospital took care of Bonnie after the operation. Bonnie was the girlfriend of the nurse's ex-husband. While Bonnie was asleep during her recovery from the operation, the nurse punched Bonnie in the face. The punch broke Bonnie's jaw.

What theory or theories of liability might reasonably be asserted in each of the following actions, and what defenses can reasonably be raised? Explain each fully.

2.3. Bonnie v. Dr. Smith

2.4. Bonnie v. the hospital for the nurse's actions

[End of Question 2]

TEST CONTINUES ON NEXT PAGE

**LOUISIANA STATE BAR EXAMINATION
TORTS
JULY 2019**

QUESTION 3 -- 20 POINTS

For each of the following ten multiple choice items, select the letter that corresponds to the correct answer.

- 3.1. Medical malpractice; exceptions
- 3.2. Premises liability
- 3.3. Conflict of laws; products liability
- 3.4. Punitive damages for tort claims
- 3.5. Battery
- 3.6. Defamation
- 3.7. Invasion of privacy
- 3.8. Assault
- 3.9. Strict liability for dogs
- 3.10. Comparative fault

[End of Question 3]

END OF TORTS TEST