

**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]

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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]

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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

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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]

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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]

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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

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QUESTION 1 - 40 POINTS

Paul was arguing with his friend and roommate, Dan. After Dan struck Paul with a baseball bat, Paul fled the apartment and ran across the street to his grandmother's house and away from Dan. Dan chased Paul through the street waving the bat.

Just as Dan was chasing Paul, a driver in a car on the street was texting while driving. As Paul entered the street, the driver saw Paul and slammed on the brakes but the car did not stop. The driver's car struck Paul. Paul was severely injured by the collision.

Paul's grandmother ran out of the house when she heard the collision. Paul's grandmother saw Paul lying in the road after he was struck by the driver's vehicle and became distraught by the sight of her grandson lying severely injured in the road. Dan saw Paul lying in the road and also became distraught by the sight of the injuries to his friend and roommate.

The brakes on the driver's car were manufactured by ABC Car Co. (ABC). Several months before the accident, the driver had received a notice of recall from ABC regarding a brake defect. The recall notice requested that all car owners with brakes manufactured by ABC return their cars to ABC for repair of the defect. The driver threw the recall notice in the trash and did not do anything regarding the recall. If the driver's car had been repaired, the collision would not have occurred.

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.

- 1.1. Paul v. the driver**
- 1.2. Paul v. Dan**
- 1.3. Paul v. ABC Car Co.**
- 1.4. Paul's grandmother v. the driver**
- 1.5. Dan v. the driver**

[End of Question 1]

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QUESTION 2 - 40 POINTS

A woman is an associate at Law Firm LLC. A friend visited the associate at Law Firm LLC. While two friends were walking to the break room at Law Firm LLC, both of them tripped over a misplaced carpet. Law Firm LLC had knowledge of prior incidents of persons falling over the exact misplaced carpet. Because of the trip and fall, the associate broke her hand and the friend broke her leg.

2.1. What theory or theories of liability might reasonably be asserted by the associate against Law Firm, LLC for damages due to her injury? Explain.

Following the accident, the associate was taken to State Hospital. While at State Hospital, a nurse gave the associate the wrong medication which caused her to have a serious, painful reaction that lasted for over a week before she then fall into a coma. After weeks in the hospital, the associate died. She is survived by her mother and her sister.

The friend took a photo of her broken leg in a cast and posted the photo on social media. The caption of the photo stated: "Nobody should ever hire Law Firm LLC. They broke my leg and they refuse to answer my calls!" The post went viral. The managing partner of Law Firm LLC saw the social media post, as did thousands of other persons.

What theory or theories of liability might reasonably be asserted in each of the following actions? Explain.

2.2. The associate's mother v. State Hospital

2.3. The associate's sister v. State Hospital

2.4. Law Firm LLC v. the friend

[End of Question 2]

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

- 3.1. Workers compensation
- 3.2. Psychologist/Psychiatrist – limitation of liability
- 3.3. Battery
- 3.4. Defamation
- 3.5. Assault
- 3.6. Comparative fault
- 3.7. Invasion of privacy
- 3.8. Conflict of laws; products liability
- 3.9. Tortious interference with a contract
- 3.10. Strict liability for dog owners

[End of Question 3]

END OF TORTS TEST

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QUESTION 1 — 40 POINTS

Peter and Tom were friends. Peter and Tom attended a ball game. After the game, they got into Tom's car, which was parked in the ballpark stadium parking lot. Peter insisted on driving because Tom had a few alcoholic drinks at the game. Tom was upset that Peter insisted on driving.

Tom's car had a problem with the steering. The steering wheel would lock at random times and the driver would be unable to turn. Tom had previously received a post card in the mail from ABC Car Company, the manufacturer of Tom's car, asking Tom to return the car to the dealership for some important repairs. The post card did not detail the steering wheel problem, and Tom did not return the car to the dealership for any repairs.

As Peter and Tom were leaving the stadium parking lot, Tom was yelling at Peter. Peter turned his head to yell back at Tom just as the car was entering an intersection. Victor was a pedestrian crossing the intersection in the crosswalk at the same time the car entered the intersection. Tom yelled at Peter to look out, Peter attempted to swerve, but the car's steering locked. The car struck Victor.

Victor's spouse, Cathy, was present and watched Victor get struck by the car. Cathy was unfazed by the crash and told Victor to get up and brush it off. Victor did get up but had suffered internal injuries that were not immediately apparent. He was later treated by Dr. Ortho improperly and ended up with permanent liver damage.

What theory or theories of liability might reasonably be asserted in each of the following actions (1.1 through 1.4), what defenses can reasonably be raised, and which party is likely to prevail?

- 1.1. Victor v. Peter. Discuss.**
- 1.2. Victor v. Tom. Discuss.**
- 1.3. Victor v. ABC Car Company. Discuss.**
- 1.4. Victor v. Dr. Ortho. Discuss.**

- 1.5. Under what theory or theories might Cathy bring an action against any of Peter, Tom and ABC, what damages might she reasonably seek, and is she likely to prevail? Discuss.**

[End of Question 1]

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QUESTION 2 — 40 POINTS

Storage Corp. owns an old brick warehouse along one side of an alley. The alley and the building on the other side of the alley are owned by Nextdoor Corp., but Storage Corp. personnel sometimes park their cars in the alley.

A few months ago, Morgan, the manager of Storage Corp., was returning from a work errand in his car. As he was driving into the alley, he was talking on his cell phone with a customer and, distracted by the call, accidentally bumped his car in Storage Corp.'s brick wall, causing it to crack. But Morgan did not tell anyone else about this incident.

Paint-R-Us is a painting contractor that Nextdoor Corp. hired to paint its building along the alley. Last month, Paint-R-Us employee Parker was working in the alley with another Paint-R-Us employee, Wilson. Each was on a separate ladder. While they were painting, Wilson was careless and fell off his ladder, which then crashed into the Storage Corp. wall. The Storage Corp. wall thereupon collapsed into the alley knocking Parker off his ladder and crushing him. Paint-R-Us was aware that Wilson had caused or been involved in several work-related accidents.

Parker was severely injured by the collapse of the wall. He was transported by ambulance by Regional EMS, which is a qualified health care provider. On the way to the hospital with Parker, the ambulance ran into the back of another car. As a result of the impact, Parker was thrown from the ambulance and died instantly on impact.

Parker is survived by his wife, Blair. Blair has suffered severe depression as a result of Parker's death.

2.1. What types of claims are available to Blair? Discuss.

What theory or theories of liability might reasonably be asserted in each of the following actions (2.2 and 2.3), what defenses can reasonably be raised, and which party is likely to prevail?

2.2. Blair v. Wilson and Paint-R-Us. Discuss.

2.3. Blair v. Storage Corp. Discuss.

2.4. Blair wants to bring an action against Regional EMS based on medical malpractice. Is she likely to prevail? Discuss.

[End of Question 2]

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

- 3.1. damage caused by animals

- 3.2. negligent entrustment

- 3.3. battery

- 3.4. conflict of laws; products liability

- 3.5. defamation

- 3.6. invasion of privacy

- 3.7. tortious interference with contract

- 3.8. survival action; rank of designated beneficiaries

- 3.9. assault

- 3.10. merchant liability

[End of Question 3]

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QUESTION 1 — 40 POINTS

Pam was traveling south on a Louisiana state highway. Pam was stopped at a red light. Three days before, Pam had discovered that her brake lights were not working, but she had not gotten around to getting her brake lights repaired.

Dan was also travelling south on the same Louisiana state highway at the same time behind Pam. Dan was going through a break up with his girlfriend Tina, and Tina was texting Dan incessantly as Dan was driving. Dan sent a text to Tina asking Tina to stop texting while Dan was driving, but Tina did not comply. Dan was checking the latest text from Tina when he ran into the back of Pam's vehicle as Pam was stopped at the red light.

Pam suffered a broken arm, and her car was completely wrecked and undriveable. She was transported to the emergency room at Hospital via ambulance. While at Hospital, Dr. Smith, the emergency room physician at the time, mistakenly gave Pam the wrong medication. In addition, the nurse administered the medication improperly. Pam suffered a total and permanent loss of sight due to these actions. Dr. Smith was not employed by Hospital, but instead was privately employed and had privileges at Hospital. The nurse was employed by Hospital.

In each of the following actions, (i) what theory or theories of liability might reasonably be asserted, (ii) what defenses can reasonably be raised, and (iii) which side is likely to prevail?

- 1.1. Pam v. Dan. Discuss.**
- 1.2. Pam v. Tina. Discuss.**
- 1.3. Pam v. Dr. Smith. Discuss.**
- 1.4. Pam v. Hospital. Discuss.**

[End of Question 1]

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Patrice went shopping at Everything Mart. Patrice often shopped at Everything Mart and knew that it was not the tidiest store. When Patrice was at the end of the produce aisle, she slipped on a grape and fell, which caused a severe injury to her head.

Tom was an employee at Everything Mart. Tom was instructed to make rounds of the store every hour to ensure that there were no foreign objects on the floor. As Tom was entering the produce aisle, he did not see Patrice lying on the floor and tripped over her, injuring his knee. Neither Tom nor Patrice could get up from the floor due to their injuries, but they had a conversation while remaining on the floor. Tom told Patrice that his knee was injured, and Tom told Patrice that grapes are often on the floor of the produce aisle at Everything Mart. Patrice told Tom that she was losing consciousness. Patrice asked Tom to make sure that “Jesse knows that I love him!”

Patrice eventually died from her injuries. At the time of her death, Patrice was married to her second husband, Wayne. Patrice and Wayne did not have any children together. Wayne had one child from a previous marriage, Jesse. Jesse was a minor at the time of Patrice’s death. Although Jesse lived with Patrice and Wayne, Patrice never adopted Jesse.

Prior to her marriage to Wayne, Patrice was married to Fred. That marriage ended in divorce. Patrice and Fred had one child born of their marriage, Tiffany. Tiffany was 23 at the time of Patrice’s death.

A. Each of the following parties wants to bring a lawsuit against Everything Mart to recover damages for Patrice’s death.

2.1. Wayne

2.2. Jesse

2.3. Tiffany

2.4. Fred

What theory or theories of liability, if any, might each reasonably assert, what defenses, if any, might reasonably be raised and which side is likely to prevail in each case? Discuss each fully.

B. **2.5.** Tom wants to bring an action against Everything Mart to recover damages for his injuries. What theory or theories, if any, might he reasonably assert, what defenses, if any, might reasonably be raised and is he likely to succeed? Discuss fully.

[End of Question 2]

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Ten multiple choice questions, each worth 2 points, tested the following areas of law:

- 3.1. Battery
- 3.2. Art. 2317. Acts of others and things in custody.
- 3.3. Government immunity
- 3.4. Comparative fault
- 3.5. Self-defense
- 3.6. Merchant liability
- 3.7. Negligence; duty
- 3.8. Invasion of privacy
- 3.9. Art. 667. Limitations on the use of property.
- 3.10. Defamation

[End of Question 3]

END OF TORTS TEST