
FINAL EXAMINATION

Open-book. Three hours.**Write your exam number here: _____**

All exam materials (including this booklet and your response) must be turned in at the end of the period. You will not receive credit unless you return this booklet with your exam number written above. Do not turn the page until instructed to begin.

General Notes and Instructions

1. Your goal is to show your mastery of the material presented in this course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
2. For the purpose of answering questions, unless otherwise directed, assume that today's date is the original, officially scheduled date of the administration of the exam (printed in the bottom-right of this page).
3. Unless expressly stated otherwise, assume that the facts recited herein occur within one or more hypothetical states within the United States.
4. Unless directed otherwise, base your answer on the federal law, the general state of the common law, and typical state statutory law in the United States, including all rules, procedures, and cases as presented in class, as well as, where appropriate, the theory and history discussed in class.
5. You may write anywhere on the examination materials – e.g., for use as scratch paper. But only answers and material recorded in the proper places will be graded.
6. During the exam: You may not consult with anyone – necessary communications with the proctors being the exception. You may not view, attempt to view, or use information obtained from viewing materials other than your own.
7. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
8. After the exam: You may discuss the exam with anyone, except that you may not communicate regarding the exam with any enrolled member of the class who has not yet taken the exam, and you must take reasonable precautions to prevent disclosure of any information about the exam to the same.

Specific Notes and Instructions for PART TWO:

- a. This Part Two is approximately 2/3 of your exam grade.

- b. This Part Two of the exam is administered on an "open-book basis." You may use any notes and books you like. No electronic or interactive resources (such as a tablet computer, smart phone, etc.) may be used or referenced. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session. No materials may be shared during the exam.
- c. This exam will be graded anonymously. You may not waive anonymity. Do not write your name on any part of the exam response or identify yourself in any way, other than to use your examination I.D. number appropriately. Self-identification on the exam or afterward will, at a minimum, result in a lower grade, and may result in disciplinary action.
- d. Keep in mind the hypothetical setting for the exam facts, noted in general instructions above. In your written response, it is appropriate, if you wish, to note differences between minority and majority approaches in your answer, as well as statutory or other differences among jurisdictions.
- e. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
- f. Organization counts.
- g. Read all exam question subparts before answering any of them – that way you can be sure to put all of your material in the right place.
- h. Feel free to use abbreviations, if the meaning is clear.
- i. **Bluebooks:** Make sure your handwriting is legible. I cannot grade what I cannot read. Skip lines and write on only on one side of the page. Please use a separate bluebook for each subpart.
- j. **Computers:** Please clearly label each subpart of your answer.
- k. All exam materials, including this booklet, must be turned in at the conclusion of the period for taking this portion of the exam.
- l. Good luck

Mammoth Gardens

MISTS OF LIQUID NITROGEN VAPOR SPILLED OUT OF THE BARREL-SHAPED FREEZER as Selena Sidenbeck pulled out the test-tube rack. The darkened lab was dimly lit in red. The interior of the freezer glowed with blue neon light. And Selena's white lab coat took on a dazzling luminescence from blacklights concealed under a nearby counter. It was just like being in *Jurassic Park* – but for real.

Selena was Chief of Genetic Engineering and Managing Director of Mammoth Gardens, a theme park owned and operated by Hexetron Genetics Corp. Obviously, Selena was not trying to re-create dinosaurs. That was absurd. You couldn't use petrified anything to reconstruct the DNA of animals that died millions of years ago. But bringing back mammals that roamed Earth during the Great Ice Age? That was like going to the Moon. It was the perfect challenge: Nearly impossible, but not quite.

The last woolly mammoth died just 4,000 years ago. Their carcasses have been found intact, encased in ice. And saber-tooth tigers lived as recently as 10,000 years ago, and frozen tissue of those animals had been recovered as well.

So it wasn't impossible. Just insanely difficult, requiring enormous scientific brilliance, beyond-the-leading-edge laboratory techniques, and unceasingly intense effort over the course of years. And, now, it was done. Selena was looking at 43 vials of frozen woolly mammoth embryos and 27 vials of frozen saber-tooth tiger embryos. They would soon be used for in vitro fertilization of the adult female woolly mammoths and saber-tooth tigers already in the park. It would be the park's second generation of these true wild animals – identical to how nature made them long ago. Yet brought back to life through the triumph of human ingenuity.



FIG. 1: *Related to modern elephants, woolly mammoths were part of the megafauna of the Pleistocene epoch – including the Great Ice Age. Mammoths co-existed with early humans, and their extinction may have been ultimately caused by hunting.*

All of a sudden, bright white lights came on everywhere in the lab, disturbing Selena's reverie.

"Let me help you by turning on some lights, Selena. It looks like you were working in the dark," said a familiar voice.

It was Umberto Ulvinari, Senior Vice President of Risk Management at Hexetron Systems, Inc., the parent company of Hexetron Genetics Corp.

"Get lost, Umberto!" Selena yelled.

"Let's see," he said. "There's no scientific purpose for anything fancier than normal white office lights. Hmmm. It's almost like someone spent \$50,000 to have a Hollywood lighting designer trick-out this lab so someone who works here could pretend she's in a movie. Meanwhile, light helps us avoid accidents. And, as you know, giving solid advice about managing risk is what I do."

"The lighting is inspiring," Selena shot back. "Spending money to enhance employee morale is a good investment!" It was all Selena could do to not throw a piece of laboratory glassware at Umberto. Just this morning she had found out that, based on his advice, Hexetron Genetics Corp would not be opening a second Mammoth Gardens theme park. The cancelled plans meant Selena was denied a promotion that would have given her a \$200,000 a year raise.

"It was worth the expense," she spat out. "We're doing great things here!"

"You're doing dangerous things here, Selena. There's already a serious risk posed by the wild saber-tooth tigers and woolly mammoths you have on display in the park. And yet, you were compelled by hubris to go even further and genetically engineer a breed of dwarf woolly mammoths, selling them to the public as pets. You personally approved that, didn't you?"

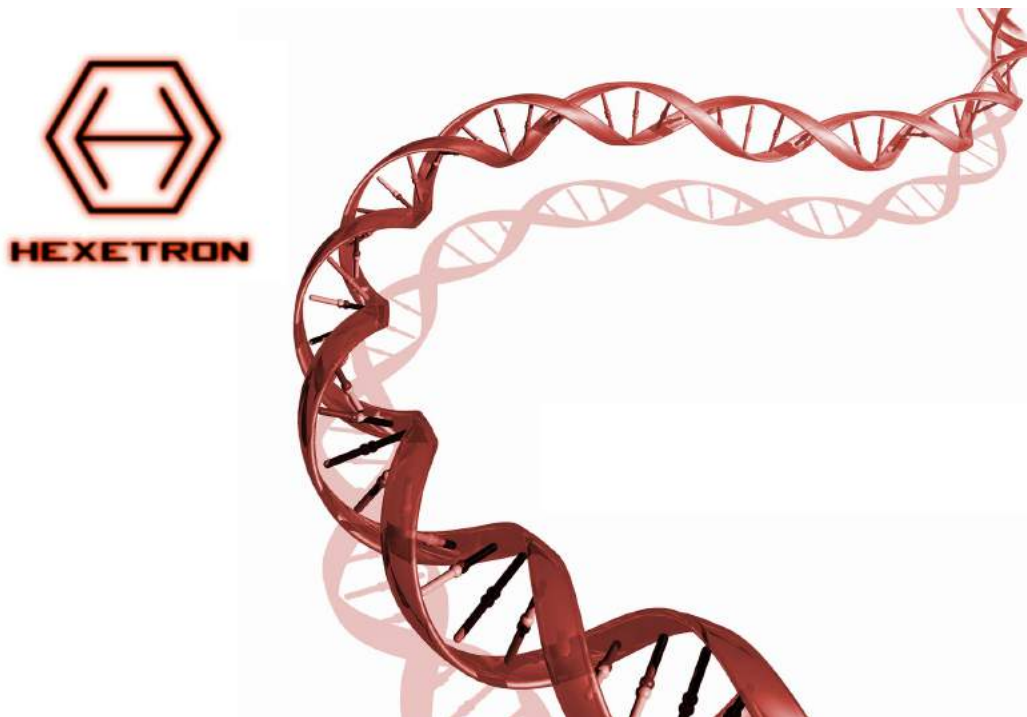


FIG. 2: This mural graces the lobby of Mammoth Gardens' main laboratory building.

“Yes,” Selena said with a satisfied look and a raised eyebrow. As she picked up an Erlenmeyer flask, she added, “We’re providing more value to shareholders – just though pet sales – than you could provide over 20 lifetimes doing what you do. And we’re bringing a sense of pure magic to the world, inspiring millions of children to see the wonderful things that science brings to the world.”

“Well, you’d better look at this.” Umberto thrust a newspaper at Selena. “You tamper with the genetics of something dead for thousands of years to make it cute, and you don’t know what can happen. This, for instance.”

It was the *Talladegahassee Tribune*. She read this story on the front page:

Child Attacked by Pet Woolly Mammoth

by Rhen Renley, Staff Reporter,
Talladegahassee Tribune

Nine-year-old Yuriko Yamasaki is in critical condition at a local hospital after being repeatedly stabbed by the tusks of a dwarf woolly mammoth purchased by the Yamasaki family last month at Mammoth Gardens.

The parents of the injured girl say that the woolly mammoth, which the girl named Snugglekins, is less than two feet high at the shoulder and weighs just 90 pounds. The animal behaved normally, according to the parents, for over two weeks since they brought it home. Then, without warning, it pushed their daughter into a corner of the living room and began using its elongated tusks to spear her repeatedly.

Snugglekins is currently being held at a local animal welfare center.

Representatives at Mammoth Gardens did not respond to immediate requests for comment. The theme park—a zoo for extinct animals from the Ice Age—sells dwarf woolly mammoths as pets for \$900,000 each.

Few can afford them, but children everywhere are infatuated with the adorable-looking animals that are miniaturized versions of the 10-foot-tall, six-ton woolly mammoths now living and on display at the park.

This is the first reported injury linked to any of the animals brought back from extinction through Mammoth Gardens’ groundbreaking genetic engineering work.

Akio Akiyama, the girl’s father, said Mammoth Gardens had misled him about the pet.

“They said the dwarf woolly mammoth was

friendly and suitable for a house with children,” Akiyama said. “The mammoth likes cuddles. Might shed a lot, but is generally a great pet. That’s what Mammoth Gardens told us.”

Now his little girl is fighting for her life in a hospital bed.

“Lesson learned,” Akiyama said. “When she recovers, we’ll buy her a pony.”

Dr. Jeff Joulebloom, a scientist that has been outspoken against Mammoth Gardens, said the incident should have been expected.

“The kind of control that Mammoth Gardens was attempting here is just not possible,” Joulebloom said. “Along with maybe nuclear power, genetic power is the most awesome force ever seen on this planet. I keep trying to explain things like this. But no one seems to take the prospect of disaster seriously until it’s too late.”

Dr. Selena Sidenbeck, the famous genetic engineer who pioneered re-creating extinct animals at Mammoth Gardens, has a history of pushing scientific innovations out to the public quickly—too quickly, according to critics.

In her previous role at a pharmaceutical company, Sidenbeck encouraged the marketing of Planzizam, a drug that killed more than a dozen people by causing cardiac arrest. Sidenbeck was found to have concealed information about Planzizam’s dangerous side-effects in order to maximize the profits she received from stock options provided by the company.

The mammoth attack is the worst Floribama theme-park-related injury since at least one person was sickened last year by a parasitic amoeba traced to the Lucky Lagoon waterpark.

"That's a lie!" Selena yelled. "I never concealed anything about Planzizam! No one knew about the problems with Planzizam. If I'd known, I never would have supported taking that drug to market."

Umberto shrugged her off and walked back into the hallway. "You are on television often enough," he said over his shoulder. "You're a celebrity-scientist. I'm sure you'll have plenty of opportunities to set the record straight."

At that moment, Selena's phone rang. She answered.

"Selena Sidenbeck? I'm Rhen Renley with the *Talladegahassee Tribune*. I'm calling about the Snugglekins attack."

"You just printed a lie about me in the paper this morning, Rhen." She proceeded to explain what she'd known about Planzizam and how she hadn't concealed anything.

"Okay, I'll do a follow up and give your side of it. But I tell you Selena, I had a solid source for that story. I won't tell you the name, but it was a food-stand employee at Mammoth Gardens who had heard it from someone."

"That's a ridiculous source for the story!" Selena shot back. "No reputable journalist would rely on a source like that!"

"Well, I knew it might not be true. But I had a source. That's what we reporters do - rely on sources. Now let me ask you the question I called you up for," he said, shifting the conversation. "Why did you text your seven-year-old nephew that it wasn't safe to try to cuddle with a dwarf woolly mammoth?"

"Where did you get that from?!?" Selena half-screamed into the phone. "You sure didn't get it from a food-stand employee!!"

"We have a cooperative arrangement with Filipa Freeman, Director of the Floribama Department of Investigation, which is a division of the state police. They have some technology that they've installed on local cellular communications towers that are owned by the media-communications company that owns the *Talladegahassee Tribune*. They collect the texts, and they share some with us in return for hosting their equipment on our company's towers," Rhen explained.

"That is blatantly in violation of federal constitutional rights!" Selena was aghast.

"We know," Rhen allowed. "So, do you have an answer to my question?"

Selena hung up the phone. She was fuming. In her fury, she took the Erlenmeyer flask she was still holding in her right hand and bonked it against a countertop. But she hit it a little too hard, and it shattered. She felt a shard of glass cut right through her hand and down to the bone. And instantaneously the alarms went off.

KLAXONS ECHOED AROUND THE BUILDING: AWOOGA! AWOOGA! AWOOGA!
AWOOGA! Alarm bells rang in a continuous, urgent, brassy cacophony. Spinning red siren-lights and strobe flashes lit up the walls and ceilings.

"This is a level-4 emergency," said a woman's calm voice in a British accent. "Repeat, a level-4 emergency."

"WHAT IS GOING ON?!?" Selena shouted.

Umberto poked his head back in the lab.

"It's the Hollywood alarm system you ordered along with the scientific-ambiance mood lighting for the labs," Umberto yelled over the noise. "Perhaps a little over the top?"

Then everything went silent as someone shut off the alarm system.

Selena looked down at her hand. It was bleeding profusely. She must have severed nerves, because she couldn't move two of her fingers. Shaking, she went to the first-aid box to bandage herself up.

Then a young guy's voice came over the intercom. He sounded nervous.

"Um, hi everyone. I shut off the alarm. But there actually is a problem. All four of the saber-tooth tigers have gotten out of their enclosure. And they're heading toward the picnic grounds. Um, also, it's kindergarten day. And the kindergartners are lunch – I mean they're *having lunch* right now at the picnic grounds."

Selena knew all too well it was kindergarten day. That's where her five-year-old daughter was right now.

UP THE ROAD FROM MAMMOTH GARDENS at NASA's Mennedy-Karshall Space Flight Center, veteran astronaut Bonnie Beltier was preparing to teach a class to new astronaut candidates about how to stay calm in emergency situations.

Then she noticed the television. Saber-tooth tigers had escaped their enclosure at Mammoth Gardens. She knew the head game warden there – it was her first cousin, Gary Geldenhark. She called him from her cell phone as she was running out the door of her office building and toward the helicopter pad.

"Gary, you don't have any way to get up above the park, do you?"

"No, Bonnie, I don't."

"I'm going to take a helicopter. I'll pick you up from the roof of the park administration building." As Bonnie hung up she was climbing into one of the NASA helicopters that Bonnie was in ultimately in charge of as Director of Astronaut Flight Readiness Training. She began racing through the pre-flight check and started up the engines.



FIG. 3: *The saber-tooth tiger was the most fearsome predator of the Pleistocene.*

BACK AT MAMMOTH GARDENS, the news helicopters had already gotten to the scene. They abandoned a police chase a half mile away and were now filling the air over the theme park to provide live coverage of the escaped animals.

When three of the helicopters came in low over the woolly mammoths, the animals stampeded, colliding with the main gate of their enclosure. The combined effort of eight of the enraged creatures was enough to knock it down. They then continued their stampede by galloping down the walking paths for park visitors.

People were screaming and running everywhere. Two park visitors – Katie Karlisle and Lionel Lillenstrom – were trampled to death by the woolly mammoths.

Katie, a 23-year-old with a promising new career as a sales executive, suffered a crushed spine and ribcage. Although she was in great pain, she did not suffer long, since she died from her injuries in less than two minutes. Katie is survived by her mother and father.

Lionel, a 97-year-old retired steel worker, was pronounced dead 50 minutes after arriving at an area hospital, where doctors attempted in vain to repair the damage to his body. Lionel, who was living off Social Security benefits, had outlived his spouse, his two children, and his one grandchild. He is survived by several distant cousins. From what anyone can tell, Lionel was knocked unconscious when first hit, and he did not seem to suffer.

THWUP, THWUP, THWUP, THWUP, THWUP. Bonnie maneuvered the NASA helicopter to a soft touchdown on Mammoth Gardens' administration building. She gestured to Gary as the rotors kept churning. Carrying several guns, he ran up and jumped on. Up they went.

"The mammoths are taken care of," Gary told Bonnie over the headset. "Someone from the laboratory building brought them down. We need to deal with the cats."

Gary directed her south, toward the picnic grounds. Bonnie swung her aircraft in a low arc around the cave-man-themed roller coaster and then swooped in on the picnic grounds from above a forested area. Bonnie could see the kindergartners huddled together, pinned up against a wooden fence.

The saber-tooth tigers were advancing on three sides as a ring of terrified teachers faced them down with their arms spread back wide in a reflexive effort to put as much of themselves as possible between the drooling beasts and the children. The tigers roared, showing off their terrifyingly long fangs as they inched closer. Gary was taking aim out of the helicopter's open door.

POOF! POOF! POOF! POOF! Gary nailed all four tigers in rapid succession with tranquilizer darts.

Bonnie was just about to yell at Gary for using tranq darts instead of bullets: *Was saving the animals really more important than saving kindergartners? Was he that afraid of Selena Sidenbeck?* But at that moment, the helicopter's engines went dead, and the craft started sinking toward the ground.

The fuel! Bonnie had gone too quickly through her pre-flight check, and she had neglected to check the fuel. She groaned. Weeks ago, at her direction, NASA mechanics had removed the buzzers and flashing alarm lights for low fuel.



FIG. 4: Bonnie Beltier pilots her NASA UH-1H helicopter low over the trees as she approaches the picnic area. NASA, the National Aeronautics and Space Agency, is the federal agency charged with exploring space and advancing aviation.

These helicopters were for training astronauts, and she had made the decision that removing the alarms would force pilots to not be over-dependent on instruments to alert them when things were going awry.

She was paying for that decision now, as she struggled to keep the sinking helicopter and its whirling blades away from the children. She managed to turn away from the picnic grounds, but that took her into a copse of trees. When she hit, a tree trunk sheared off a rotor blade, which veered off in the direction of the crowd. It sliced through an inch of flesh in the upper arm of Victor Velnar – the brave teacher who was guarding the kids’ left flank.

And then everything was still. Dust hung in the air. It was finally over.

Bonnie unbuckled her seat belt and went out among the picnic tables. There were four unconscious tigers on the ground and a lot of five-year-olds who were just beginning to breathe deeply again. Bonnie used a knife to cut off one of her sleeves, and she used it to bandage Victor’s arm.

“Gary,” Bonnie spoke over her shoulder. “How did those tigers drop so quickly? I don’t understand. Are tranquilizer darts really that fast?”

But Gary didn’t answer. He was looking beyond Bonnie. She followed his gaze and twisted around to see Selena Sidenbeck standing on top of a picnic table. She was holding a .905 caliber rifle in her left hand.

The living, breathing testaments to her staggering scientific achievements – Selena had shot them all dead.

QUESTION

Analyze the parties' claims and liabilities. Mind the following:

- Do not analyze any claims of unnamed persons injured by Planzizam. Discuss that topic only insofar as it is relevant to analyzing any claim of a named party directly referenced in the facts.
- You should assume that Bonnie Beltier was negligent in the sense of having a duty of care and breaching that duty of care in causing the crash of the helicopter from running out of fuel, which in turn caused the rotor-blade injury.
- Above all, stick to this semester's subject-matter scope.

Clearly label the subparts of your answer, as follows:

- Subpart A:* Discuss the liabilities of Selena Sidenbeck and Hexetron Genetics Corp, if any, in relation to Yuriko Yamasaki and the pet woolly mammoth.
- Subpart B:* Discuss the liabilities of Selena Sidenbeck and Hexetron Genetics Corp, if any, not covered under Subpart A.
- Subpart C:* Discuss liabilities of Umberto Ulvinari and Hexetron Systems, Inc., if any.
- Subpart D:* Discuss liabilities of Bonnie Beltier and NASA, if any.
- Subpart E:* Discuss liabilities of Rhen Renley, the *Talladegahassee Tribune*, Filipa Freeman, and the Floribama Department of Investigation, if any.
- Subpart F:* If there is anything else you wish to discuss, not covered under Subparts A–E, put it under this Subpart F.

Do not repeat the exact same analysis from subpart to subpart or from party to party. Instead, you may, if appropriate, incorporate previously stated analysis by reference. If analysis of an issue is similar to but not exactly the same as what you have written previously, then I suggest you note your prior analysis and go on to discuss any differences.

Note that the subparts will not be given equal weight. The subpart structure is provided for organizational purposes, not for the purpose of separately assigning points or grades. Divide your time among the subparts according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs.

Here are some abbreviations you can use in your answer:

Akio Akiyama	AA
Bonnie Beltier	BB
Filipa Freeman	FF
Floribama Dept. of Investigation	FDI
Gary Geldenhark	GG
Hexetron Genetics Corp	HG
Jeff Joulebloom	JJ
Katie Karlisle	KK
Lionel Lillenstrom	LL
Rhen Renley	RR
Selena Sidenbeck	SS
Talladegahassee Tribune	TT
Umberto Ulvinari	UU
Victor Velnar	VV
Yuriko Yamasaki	YY

CREDITS AND NOTES

The material in this box is not part of the hypothetical facts for the exam.

Fig. 1, photo "Mammut" by Flying Puffin, © 2011 Flying Puffin, <https://www.flickr.com/people/21241590@N06>, licensed under a Creative Commons Attribution-ShareAlike 2.0 License, available at <http://creativecommons.org/licenses/by-sa/2.0/>, model from 1979 on display at Royal BC Museum. Fig. 2 by Eric E. Johnson, based on a portion of an illustration by Darryl Leja, NHGRI. Fig. 3, painting by Charles Robert Knight, 1903, from the American Museum of Natural History. Fig. 4, photo by NASA (KSC-00PP-0744).