
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. You may write anywhere on the examination materials – e.g., for use as scratch paper. Only answers and material recorded in the proper places, however, will be graded.
2. 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.
3. 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 other student examinations or from viewing materials other than your own.
4. You may not copy, transcribe, or distribute the material in this booklet or attempt to do the same.
5. 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 II 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.
- b. Unless expressly stated otherwise, assume that the facts recited herein occur within one or more

- hypothetical states within the United States. Base your exam answer on the general state of the common law and typical 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, plus any hypothetical laws presented in the facts. 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.
- c. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
 - d. Organization counts.
 - e. 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.
 - f. Feel free to use abbreviations, but only if the meaning is entirely clear.
 - g. **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.
 - h. **Computers:** Please clearly label each subpart of your answer.
 - i. 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.
 - j. Good luck!

Lucky Lagoon

THEY ALL WHOOPED WHEN THEY PASSED THE “WELCOME TO FLORIBAMA” SIGN. College friends Abby Abeyta, Bram Banzer, and Chandra Cannik were on a roadtrip – headed to Lake Suwaneehobee City to visit the Lucky Lagoon waterpark.

Impatient to get there, Chandra decided to read aloud from her phone a review of the park written last month:

Lucky Lagoon waterpark is a must see in Floribama. Fitting its theme as an old-fashioned swimming hole, Lucky Lagoon is built around an artificial but natural-looking lagoon with a sandy bottom and overhanging trees. The lagoon is separated from Lake Suwaneehobee by a low-profile dam, giving the illusion that the water extends for miles.

Every other waterpark in Floribama uses chlorinated water. So it has that bleachy smell. Chlorination is preferred by virtually all pool operators because it kills all microorganisms such as disease-causing bacteria and amoebae. But Lucky Lagoon doesn't have chlorinated water. Instead, an advanced filtration system fills Lucky Lagoon with water from Lake Suwaneehobee. That makes the fresh-smelling water wonderful to swim in.

Unfortunately, the filtering doesn't make the water quite as germ-free as chlorination. A couple weeks ago, a 12-year-old girl died from an infection caused by *Naegleria fowleri* – a parasitic amoeba common to Lake Suwaneehobee and other freshwater bodies in Floribama. Despite the fact that the infection was traced to Lucky Lagoon, park management decided to keep the park open and to not change its treatment of the water.

Several operators of other large waterparks offered their opinions in the media that it was too dangerous for Lucky Lagoon to use non-chlorinated water.

The chief engineer of one the largest resort waterparks in the United States said, “There's a reason Lucky Lagoon's the only waterpark with non-chlorinated water. Every other operator out there thinks it's too dangerous. Chlorination is the industry standard.”

Many thought Lucky Lagoon's response to the criticism was a little brusque:

“The park is safe, and people like the park the way it is,” the park press release read. “So we're not going to be doing anything new with the water. But we are proud to be introducing something that *is* new – our new phone app. Download the Lucky Lagoon app for iPhone or Android, and you'll get 25% off admission. With the app, you'll have an interactive map of the waterpark and receive updates on special events and promotions.”

Let's hope the designers of Lucky Lagoon's filtration system have a better sense of judgment than the park's publicity department.

By the way, if you decide you like freshwater/non-chlorinated swimming opportunities, although there are no other waterparks like Lucky Lagoon, there is one hotel with a pool that works on the same principle of filtered lake water – the Holiday Haven Hotel, which, while unaffiliated with Lucky Lagoon, is located just five miles away on the opposite shore of Lake Suwaneehobee.

That hotel, by the way, was dismissive of amoeba dangers as well. Asked by reporters if the hotel would be changing its pool because of the amoeba incident, the managing director of the Holiday Haven was quoted as saying, "The swimming pool is safe. If it weren't we wouldn't have it."

"Holiday Haven Hotel? That's where we're staying!" Abby exclaimed. "I had no idea about their lake-water pool. Sounds cool. But bummer about the amoeba thing."

"Yeah, kind of a downer review to read to us, Chandra," Bram teased.

The friends then discussed whether they should be concerned about the amoeba issue. But they decided it wasn't worth worrying about. They figured if a pool posed a real danger, the government would shut it down.

Of course, Abby, Bram, and Chandra all decided to download the Lucky Lagoon app to get the 25% off. When using the app for the first time, they each clicked "Agree" on this screen:



After arriving at the Holiday Haven Hotel and checking in, the friends went straight to Lucky Lagoon and bought a three-day pass, which they started using immediately. After riding the waterslides and swimming in the lagoon for a few hours, they came back and took a swim in the freshwater pool at Holiday Haven Hotel, where they watched a beautiful sunset over the Lake Suwaneechobee.

The friends then spent the next two days swimming at both Lucky Lagoon and the Holiday Haven Hotel.

Chandra's Facebook post summed it up: "Best. Time. Ever."

ONCE THEIR LUCKY LAGOON THREE-DAY PASS HAD EXPIRED, the friends got in the car and buckled up to drive 280 miles down the road to tour NASA's Mennedy-Karshall Space Flight Center. Abby was in the driver's seat, Chandra was riding shotgun in the front-right passenger seat, and Bram had the backseat to himself.

Just as they pulled out of the hotel parking lot, Chandra said, "Wow, I have a headache all of a sudden."

"You're just not looking forward to spending two hours in the car with Abby's mixtapes," Bram joked.

"No, it's all the cologne Bram slathered himself with," Abby shot back.

"Cologne? Honestly, I can't smell anything right now. Guys, I need some aspirin. This is like the worst headache I've ever had." Chandra was massaging both sides of her head.

"Okay, we'll stop at a drugstore," Abby offered.

They had pulled into the parking lot of an Express Emporium drugstore when Chandra groaned.

"Ugh. I think you guys should take me to the hospital." Then she started projectile vomiting all over the windshield.

"Holy heck, Chandra! We'll get you help!" Bram started scrambling with his phone to find the nearest hospital. It was 10 blocks north.

Abby, starting to feel freaked out, was getting turned around trying to get out of the drugstore parking lot. Owing to her panic and the difficulty of seeing through the right side of the windshield after Chandra had been sick all over it, Abby drove the car into a shopping cart, sending it careening into a brand new luxury Ranger Rover SUV. They could see the collision had busted a tail light.

"We'll report the accident after we get to the hospital," Bram said to Abby. "Just drive back the way we came. Ten blocks north."

AT THE MAGNOLIA MEMORIAL MEDICAL CENTER, Abby and Bram stayed with Chandra as she was wheeled back to a curtain area in the emergency room.

"They're my friends. I want them to stay with me, and they can know everything," Chandra said, signing a confidentiality waiver between heavens.

In Curtain Area 3, Chandra was seen by Dr. Danya Dacosta, a board-certified specialist in emergency medicine. After running through her symptoms and seeing the results of a blood-test and chest x-ray, Dr. Dacosta had a diagnosis.

"We appear to have a bad case of food poisoning here," she said.

"Check her for amoebas," Abby and Bram said in unison. They then explained to Dacosta where they had been swimming, and they relayed the information they'd heard about infectious amoeba parasites. They even found the scientific name for her to look up in the literature: *Naegleria fowleri*.

"Yeah, I'm not worried about that," Dacosta said. "Amoeba parasites are extremely rare. This is food poisoning. I'm prescribing intravenous hydration," Dacosta said. That meant providing plain saline water through an IV to replace fluids lost through vomiting. "Plus a pain-reliever and something that will stop the nausea. The food poisoning needs to run its course. She'll be better by this time tomorrow evening."

Two hours later, Dacosta discharged Chandra. It was 10 p.m., so the friends got a hotel room nearby so Chandra could rest.

IN THE MORNING Chandra didn't seem to be any better. In fact, as the morning wore on, Chandra just seemed to get worse. Her headache was unceasing and incredibly intense. Her neck also became very stiff.

"Don't take me back to the hospital," Chandra said. "The doctor said it needs to run its course."

But by the early afternoon, Chandra started acting confused, and then she became almost non-responsive. Abby and Bram put her in the car and drove back across the street to the emergency room.

This time Chandra was seen by Dr. Nellie Narimatsu, a board-certified specialist in infectious diseases. When Abby and Bram told Dr. Narimatsu about their amoeba theory, she listened. And after reviewing Chandra's symptoms, Narimatsu suspected primary amebic meningoencephalitis (PAM) caused by *Naegleria fowleri*. She prescribed an immediate course of intravenous Amphotericin B, a powerful drug that can have effectiveness against *N. fowleri*, and she admitted Chandra to intensive care. Abby and Bram refused to leave the hospital.

The next day, Chandra's parents arrived in Lake Suwaneehobee City after a 1,000 mile drive to come see their sick daughter. The parents, together with Abby and Bram, got an update on Chandra's condition from Narimatsu.

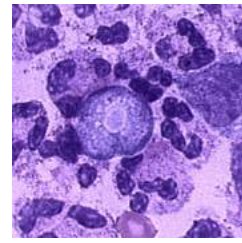
"I'm hopeful Chandra is beginning to stabilize. PAM is usually fatal. Treatment with Amphotericin B is our best option. The drug can kill or at least slow down the amoebae. Along with supportive hospital care, Chandra may pull through. But I have to be frank with you: If she pulls through, she will suffer some level of long-term impairment from the delay between the onset of symptoms to the beginning of the Amphotericin B therapy. That being the case, I would ask you to not blame Dr. Dacosta for the delay. Most physicians wouldn't suspect amoeba infection, and probably the only exposure Dr. Dacosta has had to information about *N. fowleri* is the recent Lucky Lagoon incident a few weeks ago - which everyone here at the hospital was talking about - and the lunch-and-learn talk I gave on *N. fowleri* that Dr. Dacosta attended the day before you brought Chandra in the first time. As I explained then, infection with *N. fowleri* is characterized by a sudden severe headache, nausea, vomiting (frequently projectile), and sometimes changes in smell or taste. Exposure to water known to contain the amoeba is a key indicator. Asking emergency-room doctors to know these signs and symptoms for a rare disease is asking a lot."

Bram asked whether it was possible to tell whether Chandra contracted the amoeba infection from Lucky Lagoon or the pool at the Holiday Haven Hotel.

"It's impossible to tell. The amoeba is present in Lake Suwaneehobee, and both places get their swimming water from the lake. Did you guys come in contact with Lake Suwaneehobee water any other way?"

"No," Abby and Bram answered.

"So it's a 50/50 chance it came from either Lucky Lagoon or the Holiday Haven. You can't know," Narimatsu said.



N. fowleri under the microscope

“Did swimming in both increase the likelihood Chandra would get the parasite?” Bram asked.

“Nope. You only need one amoeba to enter your system.”

MEANWHILE, ACROSS TOWN, teenagers Ian Iacobelli and Jennifer Jadotte wanted into Lucky Lagoon. But they didn’t want to pay the admission price.

Ian and Jennifer were hanging out at the Cut’n’Run convenience store just across the street from the back entrance to the Lucky Lagoon property. They were scheming. Both had on swimsuits under their street clothes.

“The back entrance is where the employees and freight deliveries go in,” Ian said. “My sister used to work there. She told me if you go in that way, you can just walk through some trees and bushes and you are in the special VIP section of the park.”

“Oh, man. We need to do that!” Jennifer said.

“But we can’t just walk in there. They’ll demand to see a pass.” Ian said, kicking the ground.

“I’ll bet that truck could get us in,” Jennifer said, nodding her head in the direction of a Federal Freight truck idling in the Cut’n’Run parking lot.

The door was open. The keys were in the ignition.

“Let’s go!” Ian said.

Ian and Jennifer dashed into the truck, and drove it out of the Cut’n’Run parking lot, exiting on to Lucky Lagoon Parkway, then making a U-turn and coming back to turn into the park’s back entrance.

The security officer raised the gate and motioned them through. “Come on in,” she said. She had her name stitched into her shirt: Gianella Golcetti. She seemed bored. “Deliveries are up on the left.”

Ian and Jennifer drove through the gate and quickly parked the truck on the side of the service road – courteously leaving it so that it would still be visible from across the street at the Cut’n’Run.

They then started sneaking through the greenery to look for the VIP area.

There it was – just ahead! They peeled down to swimsuits and continued through the brush.

“Ouch!” Jennifer yelped.

“Shhh! Be cool!” Ian whispered loudly.

“Oh, man, I think I broke my ankle,” Jennifer winced.

Ian looked back. The lower third of Jennifer’s foot had vanished into a tangle of jasmine vines. It was a depression in the ground that had been completely obscured by the overgrown groundcover.

Jennifer sat down and then pulled her leg out. Yeah, it was broken. More than that, it was a compound fracture, and Jennifer was bleeding badly.



The back entrance to Lucky Lagoon

"Leave me here and walk out by the pool so you can scout out an exit," Jennifer said. "We can't go back out the way we came in, or they'll catch us. And I don't want to walk around more than I have to attracting attention before we find a way out."

"Sure thing," Ian answered.

Ian walked out in the pool area trying to be nonchalant. He worked his way around the pool and formulated an escape for Jennifer and himself. But then he spotted Golcetti, the security guard. He turned away, slunk into the crowd, and had almost made it back to Jennifer when he heard, "Stop!"

It was Golcetti. She had found them both. "You kids are in a lot of trouble. Come with me!"

As Golcetti escorted them by the pool, a park guest tried to stop them.

"I'm a doctor. Let me help," he said. "This young woman needs medical attention."

"No, I'm helping her. She'll be alright," Golcetti told the man. "Just go back to enjoying your day at Lucky Lagoon."

SECURITY OFFICER GOLCETTI MARCHED IAN AND JENNIFER ALL THE WAY TO THE SECURITY OFFICE, which was all the way on the other side of the splash pad. It was a painful journey for Jennifer. Once inside, Golcetti split Ian and Jennifer up into two different rooms - so they'd be separated. All the better for interrogating them.

Alone with Ian, Golcetti whipped out a pair of handcuffs and slapped one on Ian's left wrist.

"Ow!" he said.

Golcetti then wound the other cuff around the metal framework under the seat of the chair Ian was sitting in, and then she clapped it on his right wrist, clicking it shut. As a result, Ian was cuffed to the underside of the chair, unable to sit completely upright.

Next Golcetti went to the room Jennifer was in. She didn't have a second pair of cuffs for Jennifer, so she just threatened her.

"You are legally required to stay here," she told Jennifer. (This was not true.) "And if you try to leave, that's a felony punishable with up to eight years in prison." (This was also not true.) "Here's something for your ankle," she added, handing Jennifer a wet washcloth.

AN HOUR LATER, GOLCETTI WAS PROUD when her boss, Oscar Outenharch, head of park security, arrived at work.

"Oscar, you know how we've been having a problem with kids coming in through the shrubbery near the back entrance? Ha! Another one of them fell in that hole in the ground that's obscured by the vines. I managed to nab her and her friend!"

"Where are they now?" Oscar asked. "Did you call the police and have them arrested?"

"No, I'm detaining them here," she said smiling.

Horrified, Oscar immediately found the two kids and told them they were released. He uncuffed Ian and called an ambulance for Jennifer. Unfortunately, Jennifer had already lost a lot of blood and was looking pale and woozy.

Oscar shook his head. He never should have hired Golcetti. She had a criminal record and a history of unchecked aggression and physical violence against people. Stuff like this could get the park sued.

QUESTION

Analyze the parties' claims and liabilities. Do not, however, analyze the claims of the unnamed 12-year-old girl injured by the amoeba infection. Discuss that event only insofar as it is relevant to analyzing the claims of the parties discussed directly in the facts above.

Clearly label the subparts of your answer, as follows:

Subpart A: Discuss claims and liabilities related to what happened with Abby, Bram, and Chandra, insofar as they are directly related to the amoeba. Do not include in this subpart claims or liabilities relating to anything that happened in the Express Emporium parking lot, and do not include claims or liabilities directly relating to care received at the Magnolia Memorial Medical Center.

Subpart B: Discuss any other claims and liabilities related to what happened with Abby, Bram, and Chandra.

Subpart C: Discuss claims and liabilities related to what happened with Ian and Jennifer.

Note that the subparts will not be given equal weight. Divide your time among the subparts according to which ones require the most discussion and analysis. Plan ahead to put information where it belongs.

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.

Some suggested abbreviations for your answer:

Abby Abeyta	AA
Bram Banzer	BB
Chandra Cannik	CC
Dr. Danya Dacosta	DD
Express Emporium	EE
Freight Force	FF
Gianella Golcetti	GG
Holiday Haven Hotel	HH
Ian Iacobelli	II
Jennifer Jadotte	JJ
Lucky Lagoon waterpark	LL
Magnolia Memorial Medical Center	MM
Dr. Nellie Narimatsu	NN
Oscar Outenharch	OO
Ranger Rover	RR