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FINAL EXAMINATION

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**Limited open-book. Two 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.**

Notes and Instructions

1. Assume that today's date is December 6, 2010.
2. 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.
3. Your goal is to show your mastery of the material presented in the Torts I course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
4. 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.
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 exam information to the same.
6. 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.
7. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
8. Organization counts.
9. 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.
10. Feel free to use abbreviations, but only if the meaning is entirely clear.
11. **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.
12. **Computers:** Please clearly label each subpart of your answer.
13. This exam is “limited open book.” The only materials to which you may refer during the exam, other than this exam booklet, scratch paper provided as part of the exam administration, and any special references specifically authorized by the Dean of Students office, are: (a) the authorized copy of the Torts Wypadki, which will be distributed to you in the exam session, and (b) a “reference sheet,” consisting of a single 8.5-inch-by-11-inch sheet of paper, upon which anything may be written and/or printed, including on both sides, front and back, (c) sticky tabs labeled with subject headings to insert into the wypadki, if you so choose. You may not consult or access any other piece of paper, including, but not limited to, a copy of the Torts Wypadki that you have printed out yourself. No materials may be shared during the exam.
14. 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.
15. Good luck!

## “IceDome”

DURING THE POST-MILLENNIAL ECONOMIC BOOM, the Nevizona desert welcomed a seemingly limitless supply of cash-flush tourists from all over the world. They not only pushed wads of cash across blackjack tables, they also charged up a storm buying tickets for all manner of themed attractions, from indoor gondola rides to repackaged French circus acts. To engage the fantasies of the spendthrift throngs arriving by the planeload, megalithic resorts offered kitsch simulacrum of Ancient Rome, Ancient Egypt, Italy, Paris, the Sahara, and the tropics. There was even a garish reproduction of New York – admittedly culturally inferior to the real thing, but definitely much better smelling.

Every resort motif had one thing in common: Warmth. They were all compatible with Nevizona’s ceaseless heat. Thus, Nevizona offered a complete escape from all of reality – except the furnace-like temperatures and glaring sun.

As it so happens, resort theming was the topic of conversation among an energetic group of recent law-school and business-school grads who were in town for a wedding. Getting to know one another over drinks at an Arabian-themed pool, they brainstormed about what new hotel-casino theme might be the next big hit.

Two of the cavorting merrymakers jumped on a waterslide together to pretend they were bobsledding. And as they slid around the banked curves and flew into a bright blue pool of unrefreshing, blood-warm water, they had a flash of genius: *Winter*. That’s what the desert needed. Cold, snow, and ice. And plenty of it. Everyone in the party immediately saw the potential. That’s when the dream of IceDome was born.

The group of fast friends soon moved to the desert and formed IceDome Inc. In a time of roaring prosperity, they found it easy to raise the hundreds of millions in capital they needed. Designs took shape quickly. The IceDome Resort would have 10 restaurants, 17 bars, and the world’s only “walk-in freezer” casino, featuring blackjack tables made entirely from ice, a sportsbook where televised hockey games were projected onto a wall of snow, and a special parlor for cold-weather-themed proposition bets. Attractions included penguins, polar bears, and a variety of winter sports.

The casino floor and entertainment attractions were all combined into a sparkling silver geodesic dome structure. The dome’s insulative roof would provide guests with 365 days of freezing weather while simultaneously supporting a plumbing system capable of generating three inches of snow an hour.

Next to the dome would be a 40-story hotel tower with 1,200 guest rooms. And, snaking into the dome from the outside, would be the resort’s flagship attraction: *the Iceway* – a covered bobsled/luge track that would offer visitors the thrill of hurtling over 90 miles per hour (144.8 km/h) down a sledding course built to full World Cup specifications.

Sandavedra Structures was doing the design and construction of the Iceway. Since the elevated track would use lenticular joists, there was an issue of how the Iceway’s joists would be supported. The customary means of supporting a lenticular joist is with floating slide hangers. But recently, an alternative had been created: the tessellated truss rod. While demonstrably safer, construction with tessellated truss rods was considerably more expensive. Eventually, Sandavedra Structures made the decision to go with the floating slide hangers. Analysts determined the cost of tessellated truss rods would not be offset by reduced insurance premiums or reduced liability risk. Moreover, floating slide hangers represented industry-accepted practice, so they seemed like a safe choice.

Plans in hand, IceDome Inc. bought land and broke ground. Almost immediately, they ran into a big problem. Surveying geologists found that the soil was badly polluted. It was contaminated with 1,000 milligrams per kilogram (mg/kg) of molybdenum monofluorobenzene and 1,000 mg/kg of chromium chlorokryptonide. This was extremely bad news: The clean-up would cost millions.

IceDome Inc. determined that the contamination came from two neighboring defense contractors: ACE Aerospace and Hexetron Helicopter. As for the molybdenum monofluorobenzene, investigators found that each of the defense contractors had caused 50 percent of the contamination. But the chromium chlorokryptonide was a different story, with 90 percent originating from ACE Aerospace and the remainder having come from Hexetron Helicopter. Unfortunately for IceDome, neither company agreed voluntarily to pay any of the clean-up costs, and IceDome had to dip into its dwindling cash reserves to get the clean up job done so that construction permits could be issued.

Despite hiccups, IceDome opened on time, and it was an immediate hit. But almost as soon as the confetti had been cleaned up from the grand opening, the global economy crashed. What's bad for most people, in terms of the economy, is generally even worse for hotel-casinos. And IceDome's revenues dried up almost overnight.

Managers figured they needed something even beyond what they already had in order to boost foot traffic. Since other resorts had success offering a "dolphin experience," in which paying guests swam with wild dolphins, IceDome undertook to provide its own brand of wild animal encounters. Granted, company attorneys were somewhat alarmed when they learned about *The Polar Bear Experience*, but their fears were allayed when they found out that Nevizona law disallows strict liability for injuries caused by animals – if someone sued, they'd have to prove negligence.

As it so happened, the well-fed polar bears were benignly playful with the guests. Although it was crazy that tourists each paid \$295 for the privilege of swimming with Earth's largest land-carnivores in a frigid tank of questionably clean water, everything with *The Polar Bear Experience* worked out. Strangely enough, when trouble happened, it was at *The Penguin Experience*.

It was 69-year-old Paul Parkand, a retired marine ornithologist,<sup>1</sup> who was the unlucky guest. On reflection, a contributing factor may have been the budget cutbacks that left the animal-care staff with a shortage of fish. The penguins had come to learn that their only reliable source of food was the *Experience* guests who purchased optional buckets of sardines to bring in with them.

When Paul Parkand was the first guest to enter the penguin enclosure after a 72-hour maintenance closure, the colony immediately waddled aggressively toward him. Parkand, who had purchased no optional extras with his *Experience*, showed the birds his empty hands. Not satisfied, the penguins swarmed Parkand and began pecking at his trousers. They backed him up until he fell into the tank.

Parkand, who never learned how to swim, struggled mightily in the freezing water while the penguins poked and prodded. It may have been a vain search for something edible, or it may have been pent-up rage, but for whatever reason the penguins just wouldn't leave him alone. Parkand nearly drowned.

In the end, Parkand's injuries were minor. But it was no thanks to the IceDome staff.

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<sup>1</sup> An ornithologist is a scientist who studies birds.

# ICEDOME

HOTEL • CASINO • RESORT

## Animal Experiences!

Walk, swim, and wrestle with our two friendly 900-pound polar bears, or frolic on the land and in the water with our three dozen adorable Gentoo penguins!

### The Polar Bear Experience - \$295

Optional extras:

Simulated snow storm - \$95

Life jacket rental - \$30

Plush baby seal puppet - \$75

Souvenir t-shirt - \$45



### The Penguin Experience - \$195

Optional extras:

Simulated wave action - \$95

Life jacket rental - \$30

Bucket of fish - \$75

Souvenir t-shirt - \$45



IT'S FROSTY!

IT'S FUN!

Coming Soon ...  
THE WALRUS  
EXPERIENCE!



When Parkand was rescued, it was by a guest, Rachel Remular. She scaled a glass wall and jumped into the frigid tank to brave the angry birds and drag the gasping Parkand onto land and out the door of the enclosure. Remular's only injury was a cut on her upper back, sustained as she went over the wall. It wasn't bad, but it did require stitches. At the hospital, Remular was treated by emergency-medicine specialist Dr. Dabney Dabonka. He not only stitched Remular up, but, as he revealed afterward, he also removed what he regarded as an unsightly mole on her shoulder.

Happily for IceDome Inc., Parkand was a hotel guest, and like all hotel guests, he had signed a standard form at check-in. That form provided that Parkand "assumed all risks of injury while on IceDome property." What's more, the desk clerk could even testify that Parkand had read it, since he commented on the content of it while signing.

Also lucky for IceDome was the fact that they avoided significant bad publicity from the incident. (A UFO sighting in the desert about 50 miles to the north had drawn all the news trucks out of town for the day.)

In the ensuing weeks, IceDome continued to prosper. But the good times soon came to an abrupt end. On a busy weekend, a group of more than 20 drunken revelers - none of whom were hotel guests - rushed past the lone teenage employee working at the

Selections from **NEVIZONA COMPILED STATUTES, TITLE 20: HEALTH AND SAFETY:**

*From Chapter 3:*

**§ 20-323 – Soil Contamination.**

New construction shall not be undertaken on land with contaminated soil. Under this section, “contaminated soil” means soil with above-threshold levels of enumerated pollutants, with pollutants and thresholds being as follows: ... chromium chlorokryptonide, 800 mg/kg ... molybdenum monofluorobenzene, 750 mg/kg ... .

*From Chapter 7:*

**§ 20-702 – Prohibition of Strict Liability in Relation to Animals.**

No civil recovery at law shall be permitted for damages caused by animals unless negligence can be shown by a preponderance of the evidence.

*From Chapter 9:*

**§ 20-901 – Penalties.**

Violation of any provision of Title 20, Chapter 9 shall be punishable by a fine of not more than \$250 for the first violation, not more than \$500 for the second violation, and not more than \$1,000 for each successive violation.

**§ 20-949 – Operation of Swimming Pools.**

A commercial operator of a swimming pool shall provide a lifeguard on duty at all times guests are permitted in the pool area. In this title, “swimming pool” shall mean any artificial volume of water not primarily used for bathing in which swimming is permitted by guests. Notwithstanding this section, motor lodges with fewer than 50 guest rooms are permitted to operate a swimming pool for guests if signs are prominently posted in the pool area advising “NO LIFEGUARD ON DUTY”; such message being in all capital letters of at least three inches in height.

**FIG. 2: Selected statutes on the books in the state of Nevizona.**

Iceway starthouse and crammed themselves into four bobsleds. Linking the sleds with clasped hands, they started down the chute in a train. The elevated track groaned under the weight. After all, the design had only contemplated one four-rider sled at a time.

When the sleds came to the portion of the track that was suspended over the Floeing Spirits bar, the structure gave way. Four sleds, 20 inebriated riders, and a torrent of steel and concrete came crashing down on the patrons. Dozens were badly hurt and were rushed to area hospitals.

In the disaster’s aftermath, negative publicity about IceDome reached a fever pitch, and the Iceway collapse forced a partial closure of the resort. IceDome was already struggling in the economic downturn. If IceDome had merely had to deal with dried-up revenues and tapped-out banks unwilling to make new loans, maybe they could have struggled through. But IceDome had an Achilles heel: utility bills. Most hotel-casinos used a lot of electricity, but IceDome, with its off-the-charts air conditioning needs, was in a class of its own. Knowing they couldn’t pay for even another week’s worth of wattage, IceDome closed its doors and pulled the plug. It was fully defrosted in six days.

An investigation later determined that it was the floating slide hangers in the Iceway structure that had given way and caused the collapse. According to expert engineers, tessellated truss rods, had they been used, would have prevented disaster. If

any good came of the catastrophe, it was that tessellated truss rods almost instantly became the industry standard for lenticular-joist support.

Not long after the closure, one of the IceDome entrepreneurs made a trip to North Dakota to look for an area zoo that might be interested in some penguins or a polar bear or two. While there, he met a law student. You.

“Hey,” he said. “You studied torts. What do you make of all this?”



**FIG. 3: Exterior of IceDome, near completion. The Iceway bobsled/luge track is at right, with the primary dome structure at left.**

### QUESTION

Analyze the parties' claims and liabilities, clearly labeling the subparts of your answer, as follows:

*Subpart A:* Discuss the possibilities, if any, for tort recovery in favor of IceDome Inc. against ACE Aerospace and Hexetron Helicopter.

*Subpart B:* Discuss the possibilities, if any, for tort recovery in favor of Paul Parkand.

*Subpart C:* Discuss the possibilities, if any, for tort recovery in favor of Rachel Remular.

*Subpart D:* Discuss the possibilities, if any, for tort recovery stemming from the Iceway collapse.

*Subpart E:* Discuss anything else, to the extent you wish to do so, that does not belong under any of subparts A through D.

Note that the subparts will not all 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 with substituted parties. Instead, you may, if appropriate, incorporate previously stated analysis by reference.

*Photo and illustration credits:* Fig. 1, top to bottom: U.S. Geological Survey; Zee Evans, National Science Foundation; U.S. Fish and Wildlife Service. Fig 3: Composed illustration by Eric E. Johnson; geodesic dome photo by Eric E. Johnson; sled track photo by NikitaKa; desert background photo by Dru Bloomfield, copyright 2009 Dru Bloomfield, <http://www.flickr.com/people/14544437@N07>, licensed under the Creative Commons Attribution 2.0 Generic License.