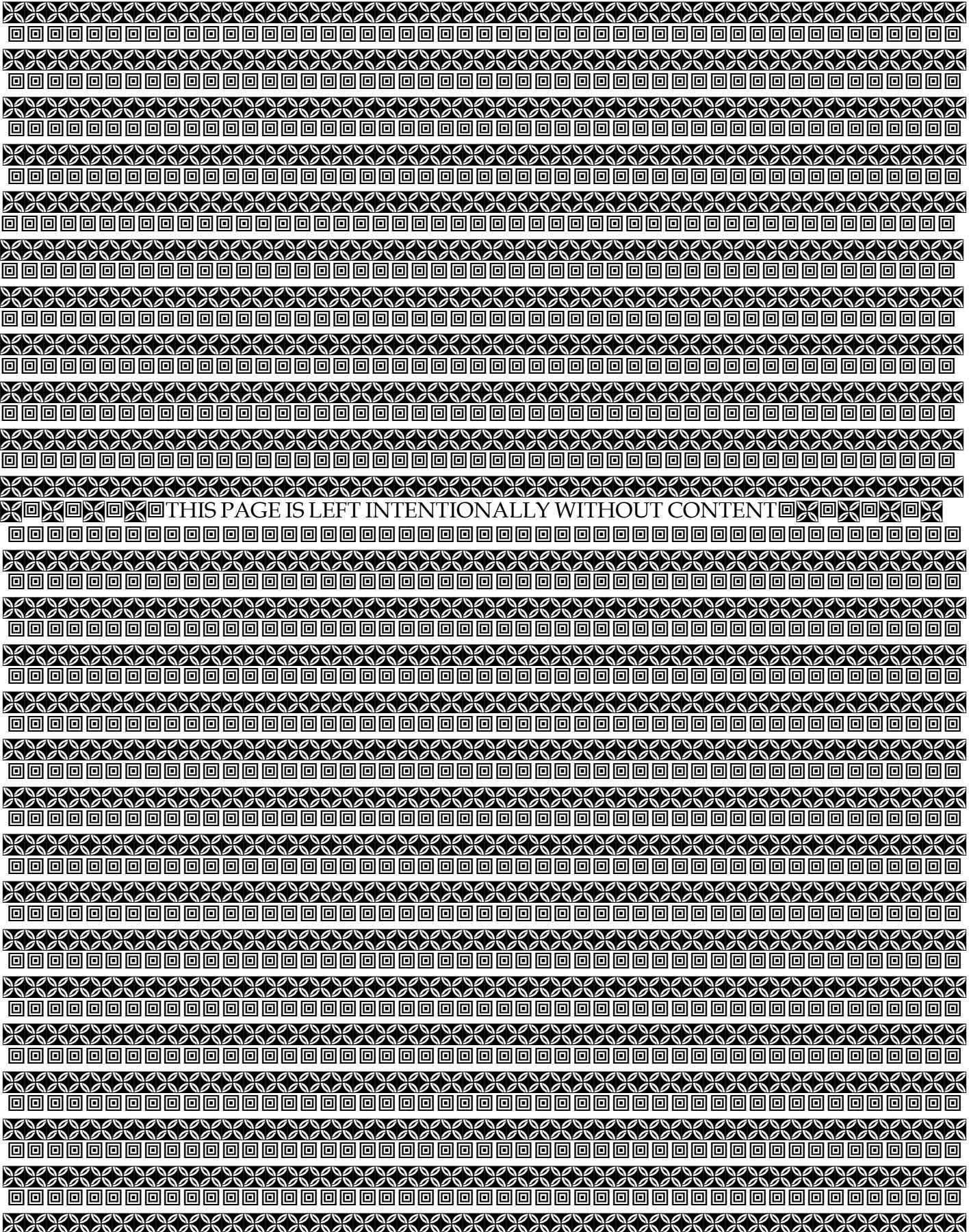

FINAL EXAMINATION - ESSAY

GENERAL INSTRUCTIONS:

1. Do not turn any page or flip over the booklet until instructed.
2. Failure to follow these instructions, including without limitation instructions 3 through 7, as well as matters of allowed materials, device usage, and time limits, are academic misconduct issues, and violations will be treated as such even if inadvertent.
3. All exam materials (including this booklet and your response) must be turned in at the end of the period **with your exam ID number written in the box above in the upper left. Do not disassemble this booklet, remove the staple, or tear pages.**
4. You may not waive anonymity. Use only your exam ID number on your response.
5. Copying the exam or any portion thereof is prohibited – including making a rough transcription from personal memory after the exam’s administration.
6. During the exam: You may not consult with anyone – necessary communications with the administrators/proctors being the exception. You may not view or attempt to view materials other than your own.
7. After the exam: Communicate nothing about the exam, including even vague impressions or characterizations, to any member of the class who has not yet taken it.
8. You must refrain from conduct which could reasonably be distracting to the students sharing the room with you, including by generating noise and smells with regard to food, drinks, and otherwise. No unwrapping of food or opening of cans or bottles after the exam period starts. No foods or drinks that smell, crunch, or otherwise make noise or omit odor. No essential oils, perfumes, or colognes. Chew with your mouth closed, and do not allow examination materials to be contaminated with food. Obey the remainder of the details spelled out in the syllabus.
9. 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.
10. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. This is what you will be graded on.
11. Unless otherwise provided, base your legal analysis on the general common law and typical statutory law in the United States, including all rules, procedures, and cases from the course, plus any hypothetical laws presented in the facts.

Do not turn any page until instructed.

When instructed turn over the entire booklet and read the remainder of the instructions on the back cover of the booklet.



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The Great Northwoods Lumberjack Show

IT WAS PAYNE PINYON'S BIRTHDAY. He, his dad, and his aunt had travelled hundreds of miles north for a special birthday getaway, and boy was he psyched. Skipping and dancing down the street, the newly-turned nine-year-old was beaming smiles at everyone who looked his way, and he was so full of compliments about everything and anything he seemed about to burst. Passing a newspaper mailbox nailed to a wall, he read the words on it and exclaimed, "*Northwoods Daily News!*?! What a great daily news!!!"

Payne was on his way to Lawson Loblolly's Great Northwoods Lumberjack Show – log rolling, axe throwing, climbing, and sawing – and plus a lot of yelling "Yo-ho!" After a mere five-minute walk from the town square, they had arrived.

At the ticket window, Payne stepped in front of his dad. "Hi Megan," he said reading the woman's name tag. "I'm Payne. It's my birthday! This is my dad, Don Douglas, and my aunt, Amelia Ashworth – actually some people call her Amy, but I call her Aunt Amelia, and we would like to buy three tickets for the lumberjack show! Actually, I think my dad prepaid. Could you please check that Megan? I'm so excited! It's my birthday! YO-HO!!!"

Don got the tickets and the threesome walked under a woodcarved sign that read, "Attention! If you sit in the front row, be ready for some good-natured teasing!" But with everything there was to look at and Payne jumping up and down, none of the three of them noticed the sign, much less what it said.

"Where do you want to sit?" Aunt Amelia asked.

"FRONT ROW!!" Payne yelled, and the three took seats front-and-center in the wood-built amphitheater. Three sides of steeply built risers partially enclosed a stage area set with logs, saws, axes, a water-filled pool, and two towering 60-foot pine poles held vertical with multiple guy wires running from the poles to anchors in the arena floor.

When it was showtime, a man came out with a hand-held microphone. "Hello everyone!" he said. "I'm your master of ceremonies, Timberlin Tremont. Welcome to Lawson Loblolly's Great Northwoods Lumberjack Show!"

The crowd applauded politely.

"That's not nearly enough excitement!" Timberlin yelled. "Get loud, get rowdy!" he ordered. He then proceeded to work the crowd into a more energetic state with a one-side-of-the-audience-versus-another noise contest.

"Now you're getting loud and rowdy!" he finally announced. "That's the way our founder Lawson Loblolly wanted it to be!" Timberlin said. "In fact, at Lawson Loblolly's Great Northwoods Lumberjack Show, it's rude to be polite! So make sure you jeer and boo as much as you cheer and ooooh!"

The lumberjack action started with a crosscut saw competition. Next was an axe throwing contest. After that there was a comedic act, with one performer, Sandy Sawyer, telling embarrassing stories about the other lumberjack performers on the stage. Sandy wore a headset mic, so everything she said boomed out to the audience. The stories she told were all tall tales that were obviously fictional, but they led to some entertaining hijinks in which performers chased each other around, throwing buckets of sawdust at one another.

The next act was a speed-climbing duel up the 60-foot pine poles. The whole audience was wowed. When that was done, Timberlin asked the audience for a volunteer.

Payne Pinyon went wild with enthusiasm. "PICK ME! PICK ME! IT'S MY BIRTHDAY! PICK ME!!!"

"I think you should pick him," said Sandy to Timberlin.

"Okay! Thanks, Sandy. I will," said Timberlin, walking over to Payne. "What's your name?"

"My name is Payne Pinyon!" Payne exclaimed, seizing the mic with both hands. "It's my birthday! This is my dad, Don. He's a lawyer! And this is his sister, my Aunt Amelia. She loves timbersports just like me!!!"

"Well, Payne, I'm going to have you come right up on stage over here," Timberlin said, pointing to where he wanted Payne to go. Payne did as he was instructed, but before he could get to the place indicated, he tripped over one of the guy wires — close to where it was anchored to the ground. Payne took a hard fall, but he instantly sprang up and yelled, "I'M FINE! IT'S MY BIRTHDAY!", which the crowd met with roaring approval.

"Payne's such a great kid," Sandy said to the crowd. "Should we check to make sure Don is a good father?"

"Yes!" the crowd yelled.

And with that Sandy grabbed Don's long-lens camera that he had put on the ground near his feet. It was a large, expensive camera, like those used by press photographers — all digital, with a four inch-monitor on the back. To great laughter, Sandy started taking pictures of Don, who tried hard not to look annoyed. Then Sandy stopped with a sudden idea. "Let's look at what photos Don has on the memory card!" she said. This was met with uproarious laughter from the crowd.

"Oooh. There are pictures of a courthouse," Sandy narrated. "And a judge. Don was spying on a judge, using this telescopic lens to see into the judge's chambers from another building. And what's that? It's a picture of the judge receiving an envelope full of cash marked 'BRIBE FROM DON.' Oh, Don, you're a dirty attorney!" Sandy exclaimed.

Everyone in the audience laughed and then began booing Don. Many yelled insults about Don being corrupt, crooked, and a criminal.



Fig. 1: A lumberjack climbs a 60-foot pole using spiked shoes and a rope around the pole's circumference. (Photo courtesy of the Great Northwoods Lumberjack Show.)



Fig. 2: A lumberjack performer clad in safety gear uses a Couperez chainsaw to cut through a pine log during the hot saw event. In the background is a target-painted log with an axe stuck in the bullseye from the axe-throwing competition. Also in the background is a large banner for Couperez Chainsaws, the exclusive supplier of chainsaws for the Great Northwoods Lumberjack Show. (Photo courtesy of the Great Northwoods Lumberjack Show.)

Don tried harder not to look annoyed. It was all a bunch of nonsense, of course. Don didn't even have any pictures on the memory card – he had put in an empty one just before coming to the show.

A guy sitting behind Don leaned down to him and said, chuckling, “You know they do this kind of thing every show. Everyone in town expects it.”

“Okay, Don,” Sandy announced, “I’m going to give you your camera back because you’re going to want to take photos of this next part.”

Sandy fitted Payne with safety goggles and put him in the middle of the arena. Timberlin instructed Payne that it would be his job to judge the winner of the next contest – the hot saw event. This event would require each lumberjack to start a chainsaw and then immediately use it to saw through a large log three times. First down, then up, then back down. Payne looked to be a safe distance away. His perch was as far from the saws as the audience was, just on the other side.

“Both of our lumberjacks are using chainsaws from Couperez Chainsaws, the choice of champions!” Timberlin announced. “Couperez Chainsaws is a proud sponsor of Lawson Loblolly’s Great Northwoods Lumberjack Show!”

At Timberlin’s instruction, Payne counted down from 10 to one and then shouted, “Saw!” The lumberjacks immediately yanked on their chainsaws to start them and began cutting through the pine logs. Suddenly there was a terrible cracking sound and a blur. A chain had broken on one of the saws and flown off. Everyone was so surprised by what had happened that it took a few moments before anyone in the crowd noticed that Don was bleeding. The broken chain had gone through the air and cut deeply into Don’s left leg.

AT THE HOSPITAL EMERGENCY ROOM, Payne was finally sleeping. Don thumbed out some texts to family to let them know what had happened: Payne had shattered his kneecap when he tripped over the guy wire, but he was too pumped up with energy and excitement to notice at first. By the time he was in the ER, however, Payne had a serious need for pain medication, so he was given an IV – a needle in his arm with a bag of saline that flowed into him intravenously. Meanwhile, Don had been given several stitches in his leg where the chainsaw chain hit him.

Still waiting for different doctors and tests, Don used his phone to do a little legal research. First, he found the state they were in was a contributory negligence jurisdiction that had never adopted comparative fault. Next, he looked to see if there were any legal standards for guy wires. There were. He found a state statute, S.R.S. §44-44, that required a physical barrier to prevent a tripping hazard around the point where a guy wire is anchored to the floor or ground – such as safety cones or some kind of built up structure. The Great Northwoods Lumberjack Show had nothing of the sort. Had they had complied with the law, Payne wouldn't have tripped over the guy wire and wouldn't have broken his kneecap.

Searching further, Don found another statute, S.R.S. §88-88, which abolished the traditional categories of land owner/occupier duties for negligence cases arising from conditions of the land. S.R.S. §88-88 provided instead that determinations of breach of duty in conditions-of-the-land cases are to be made in the same manner as with negligence cases arising from activities.

About that time Amelia came into the hospital room. “Hey Don,” she said, giving him a hug. “I found out some things about the chainsaw that injured you. Curious?”

“Tell me all about it,” Don said.

“You could spend many lifetimes using chainsaws day in and day out and never see a chain break. It almost never happens. Yet that's what happened at the show. Strangely enough, the chainsaw and the chain were brand new, right out of the box. I asked to look at the one that injured you, and I carefully inspected it. Turns out the chain had stress cracks where the parts of the chain were riveted together. Must have been lax inspection at the Couperez Chainsaw factory.”

“How do you know so much about chainsaws?” Don asked.

“Back when I was managing a ski resort, I cut down hundreds of trees for some new ski trails. The people we hired were too slow – putting us behind schedule. So I just did it myself, and I wound up getting interested in chainsaws. I actually spent a week consulting with a chainsaw manufacturer about quality control. At any rate, I can tell you based on what I know that this chainsaw didn't meet the manufacturer's design specifications.”

“Good golly. You sure know a lot stuff about a lot stuff. Wait a minute,” Don said, looking down. “What happened to your foot?”

“I was holding the broken chainsaw, inspecting it, when a U.S. Air Force F-16 fighter jet did a low pass on full afterburner. It startled me and I dropped the broken chainsaw on my foot. Broke my pinky toe. A contributing factor was undoubtedly the two espressos I had before the show. Caffeine makes me a little jumpy.”

AS THE HOURS IN THE ER WORE ON, Don and Amelia were waiting for word on when Payne would be discharged. But as techs, nurses, and doctors came and went in the course of treating his kneecap fracture, Payne seemed to be getting sick. And sicker. He turned pale, started vomiting, and became confused.

Doctors soon determined that Payne was battling sepsis caused by an infection of the blood. It was *Berratia barcescens* – a common bacteria found in the environment that will attack and feed on human tissue if introduced into the bloodstream. And

that is what was happening to Payne. Once doctors figured this out, they admitted him to the hospital and started treating him with antibiotics.

The next day, Payne was on his way to feeling better, notwithstanding the additional pain and hospital time necessitated by the infection. That afternoon, the hospital's head pathologist, Mary Mersey, M.D, came to Payne's room and explained to Don and Amelia what had happened.

The *B. barcescens* bacteria was introduced into Payne's bloodstream through his IV by a contaminated bag of saline fluid, Dr. Mersey explained. Payne had received two bags of saline fluid, one manufactured by Hexetron Hospital Supply Corporation and one manufactured by Intravenous Innovations, Inc. The bacteria came from one of the bags.

"It was one or the other," Dr. Mersey said. "50/50 chance. We've contacted both manufacturers. Both said they'd look into it, but neither accepted responsibility as of yet. And my guess is they won't. The fact is, there is almost no way a tainted IV bag comes from a manufacturer without that manufacturer having done something careless, something against accepted practice with regard to sterile manufacturing conditions. But without knowing which company it was, I don't know whom to blame. Whoever it is, however, really ought to pay."

"Yeah, you're right, they ought to," Don said. "But I have good insurance that covers me and Payne in terms of medical bills. So regardless, we won't need to pay anything out of pocket."

"Well, I'm glad to hear that," Dr. Mersey said. "We're ready to discharge Payne. But I've had a request from the local press to do an interview of Payne. Would that be okay?"

"Fine by me," Don said.

A young woman walked in with a notepad and a camera. "Hi Payne, the whole town has been wondering how you're doing. I'm here to write a newspaper article about you. I'm a reporter from the *Northwoods Daily News*."

"*Northwoods Daily News*?" Payne said cheerfully, albeit weakly. "What a great daily news!"

Questions are on the next page.

Here are some suggested abbreviations for your answer:

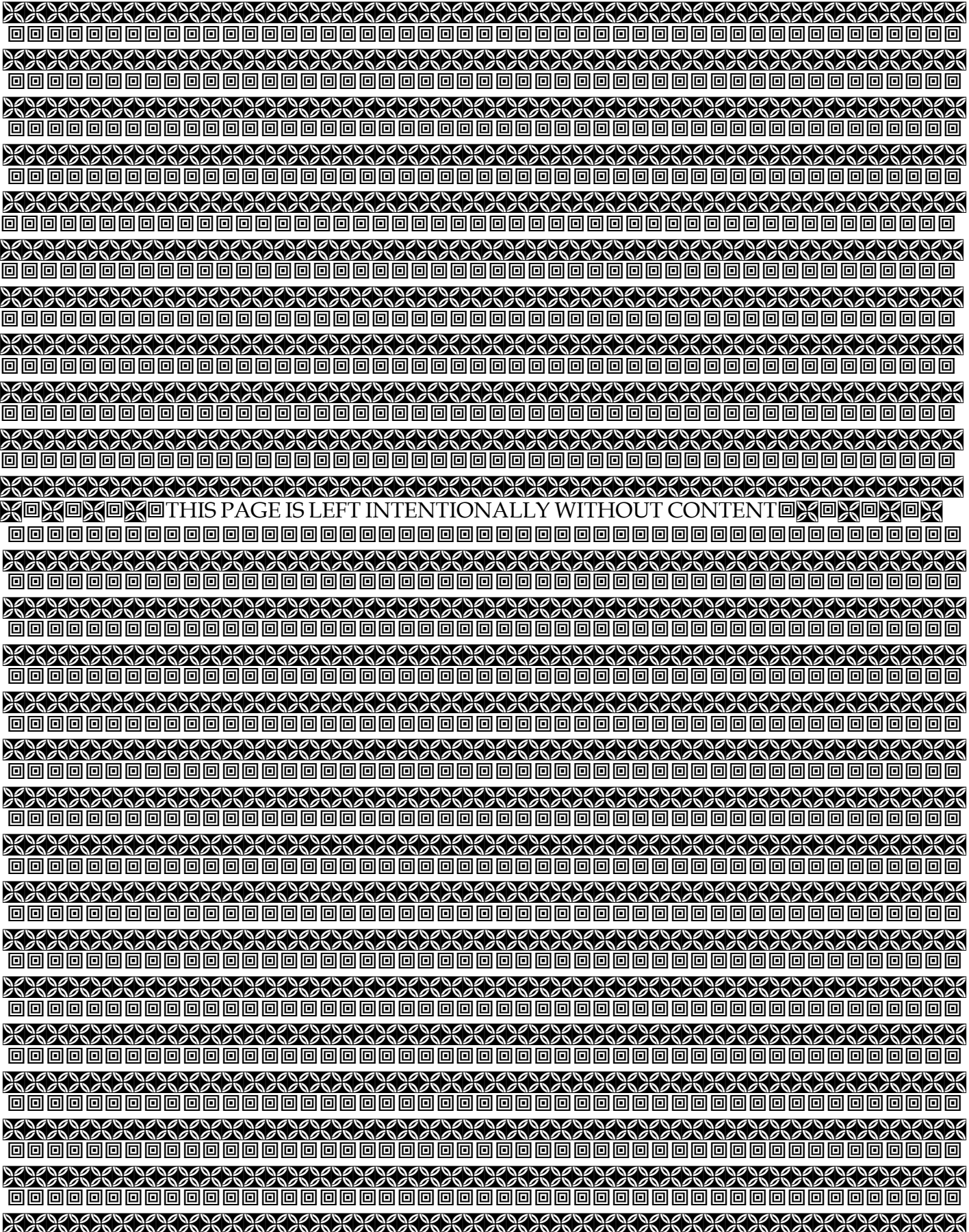
- AA Aunt Amelia Ashworth
- BB *Berratia barcescens* bacteria
- CC Couperez Chainsaws
- DD Don Douglas
- HH Hexetron Hospital Supplies Corporation
- II Intravenous Innovations, Inc.
- LL Lawson Loblolly's Great Northwoods Lumberjack Show
- MM Mary Mersey, M.D.
- PP Payne Pinyon
- SS Sandy Sawyer
- TT Timberlin Tremont

QUESTIONS

Provide analysis for the following. For all questions: **Omit all discussion of remedies. Omit discussion of anything related to the intravenous saline until Question 5. Omit analysis and discussion of vicarious liability, including respondeat superior. Omit any discussion of an affirmative defense based on the plaintiff's negligence (contributory negligence), except as indicated.** Heed the call of each question and don't provide discussion of parties or causes of action not asked for.

1. **Discuss prospects for liability of Lawson Loblolly's Great Northwoods Lumberjack Show to Payne Pinyon for negligence; include in your analysis a prospective defense of contributory negligence based on Payne's conduct.** Treat the lumberjack show employees' actions as the actions of Lawson Loblolly's Great Northwoods Lumberjack Show. And because of S.R.S. §88-88, do not use the traditional special land owner/occupier rules for duty.
2. **Discuss prospects for liability of Sandy Sawyer to Don Douglas for defamation and intentional torts.**
3. **Discuss prospects for liability of Couperez Chainsaws to Don Douglas for strict products liability.**
4. **Discuss prospects for liability of Couperez Chainsaws to Amelia Ashworth for strict products liability for her broken toe.** Please do not repeat analysis from the preceding question.
5. **Discuss prospects for liability of Hexetron Hospital Supplies Corp. and Intravenous Innovations, Inc. to Payne Pinyon for negligence.** Remember, do not discuss other causes of action.
6. **Very briefly, in no more than one or two sentences, opine as to whether Don's insurance coverage will affect any claims Payne or Don might have with regard to their medical bills.**

Important: **Limit your discussion to the questions posed.** Also: **Please do not repeat the exact same analysis when discussing a different party or answering a different question.** Instead, I strongly encourage you to 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 refer to your prior analysis and go on to discuss any differences. **Note that the questions are not separately weighted; instead, they will be lumped together for assessment.** So divide your time among the questions according to what requires the most discussion and analysis. Plan ahead to put information where it belongs. And correspondingly: **Do not expect that each question calls for an equal share of your time or words. Consider that any given question might be appropriately answered with substantial brevity or might require in-depth treatment.**



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SPECIFIC INSTRUCTIONS FOR THE ESSAY PORTION:

12. You have a total of 2 hours, including an initial 30-minute reading-outlining-only period, described below.

13. This portion of the examination is **“open book.”** You may use any paper-based notes and books you like. No materials may be shared during the exam. No electronic or interactive resources may be used or referenced. During the EW Period (described below) you may use a computer (including a keyboard-configured tablet) to write your exam, provided it is running the required exam-taking software and is used pursuant to applicable policies. But you may not reference files stored thereon during the examination session. You may wear a regular watch. Otherwise, any touching, using, accessing, wearing, viewing or listening to any electronic device is prohibited. No smart watches. No phones.

14. **30-MINUTE RO PERIOD:** The first 30 minutes is a reading-outlining period (RO Period). This is your time to carefully read the exam booklet (that is, the facts and the questions), to take notes, to reference your outlines and books, and to outline your response on scratch paper. **During the 30-minute RO Period you may not begin recording the response upon which you will be graded and you may not use any computing device.** That is, if you are taking the exam on computer, you may not type any characters at all into the computer during the RO Period; and if you are taking the exam by handwriting, you may not make any mark in any blue book (that is, an exam-response booklet, sometimes labeled a “green book”) during the RO Period.

15. **90-MINUTE EW PERIOD:** Next you will have a 90-minute exam-writing period (EW Period) during which you will write your response. For the avoidance of doubt, it is acknowledged that during the EW Period you may also continue to do what was allowed during the RO Period (e.g., refer back to the exam booklet, reference your books and notes – including any notes you created during the RO Period).

16. Organization counts. Read all exam questions before answering any of them – that way you can be sure to put all of your material in the right places.

17. Within the confines of the questions you are asked, note all issues you see. More difficult issues will require more analysis. Spend your time accordingly. As appropriate, you may, if you wish, note differences between minority and majority approaches in your answer, as well as statutory or other differences among jurisdictions.

18. Clarity counts. Clearly label each question separately in your answer. Be aware that there are no points to be won or lost for spelling, grammar, or stylistic aspects of writing—so long as I can understand what you are saying. Feel free to use abbreviations, but only if the meaning is entirely clear. **Blue books: Make sure your handwriting is legible. I cannot grade what I cannot read. Use a blue or black pen. Skip lines and write on only on one side of the page.**

19. All images are for decorative purposes only. The image captions may or may not contain useful information, but the images themselves are not provided for the purpose of communicating facts to be used in your legal analysis. Thus, in your answer, do not rely on the images themselves as a source of hypothetical facts.