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MIDTERM QUIZ - BLACKLETTER OVERVIEW

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**Limited open-book. Two-and-a-half hours.**

*This part of the midterm quiz will not be graded.  
Instructions pertaining to exam administration  
are provided only for your information.*

**Do not turn the page until instructed to do so.**

*Notes and Instructions*

**General Notes and Instructions**

1. Answer the questions based 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. Your goal is to show your mastery of the material presented in the course and your skills in analyzing legal problems. It is upon these bases that you will be graded.
2. All facts take place in the United States, unless otherwise noted. Assume that today's date is September 11, 2007, unless indicated otherwise.
3. 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.
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 student examinations or materials other than your own.

**Specific Notes and Instructions For PART TWO :**

- a. This portion of the exam is "limited open-book." You may use only the class wikioutline that is distributed in the exam session. You cannot use any other materials, and materials cannot be shared in any way with any other student during the exam.
- b. Note all issues you see. More difficult issues will require more analysis. Spend your time accordingly.
- c. Organization counts.
- d. Feel free to use abbreviations, but only if the meanings are entirely clear.
- e. Do not write your name on any part of the exam response or identify yourself in anyway, other than to use your examination I.D. number appropriately. Self-identification on the exam will, at a minimum, result in a lower grade, and such action may result in disciplinary action.
- f. 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.

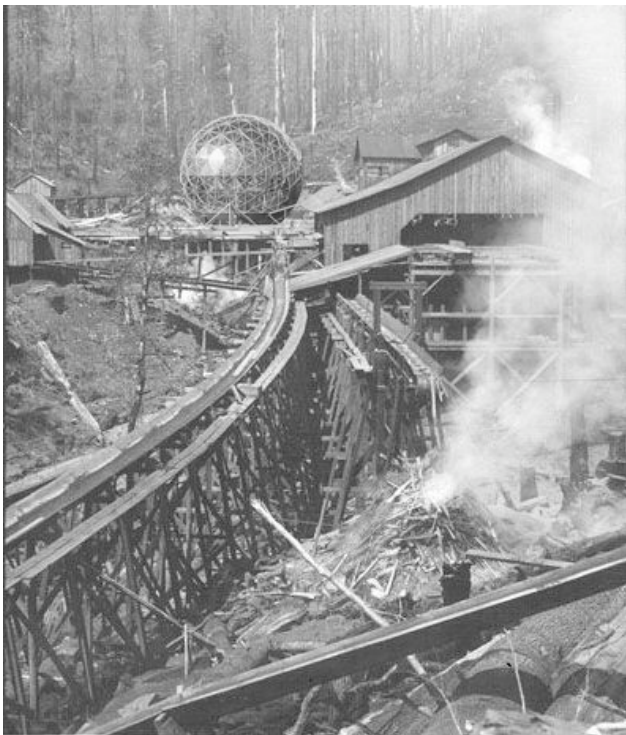
## PART TWO

### “Ye Olde Sawmill”

Having struggled financially for many decades, Ye Olde Sawmill had been looking for new revenue streams. Ye Olde Sawmill’s antiquated milling equipment simply could not process timber fast enough to compete with newer operations in manufacturing lumber. For a while, Ye Olde Sawmill supplemented its meager lumber revenues by installing large plexiglass windows and charging tourists an admission fee to see “lumber processing *as it used to be.*” But government regulation strangled the business model. To complete the “ye olde look” of the place, Ye Olde Sawmill had required its mill-floor employees to wear big, floppy shoes and blousy shirts with huge bell sleeves. But after several employees were maimed as a result of tripping over their shoes and getting their sleeves caught in the whirling blades, the federal Occupational Safety and Health Administration successfully promulgated regulations prohibiting the wearing of loose garments and oversized floppy shoes by employees in mill operations. OSHA also filled in a loophole by adding water-wheel-powered saws to the ambit of regulations requiring a flashing red start-up warning light for saws with blades of 12 inches or more, so as to let nearby persons know before the blades start spinning. Unwilling or unable to comply, on the date the new OSHA regulations took effect, Ye Olde Sawmill suspended operations.

Not helping matters had been a poorly conceived investment in building a large IMAX Dome theatre adjoining the mill and fronting the production costs for a 30-minute film titled “Lumbering Into the Past.”

Strapped for cash, Ye Olde Sawmill needed a new business model, and fast. What CEO



**FIG 1. - The Ye Olde Sawmill. The geodesic dome of the IMAX theatre is visible in the background.**

Danny Danziger came up with was, if he did say so himself, brilliant. Danny had recently read in his Auto Club magazine that there was a new travel trend in which tourists were actually paying money to briefly live like people from another era. Danny figured that if folks would pay \$200 a day to dress up like pioneers and churn butter, maybe they would pay that much or more to work in the sawmill for a day and sleep in a log cabin at night. The best part was, since OSHA regulations apply only to employees, paying customers aren’t within OSHA’s jurisdiction.

Ye Olde Sawmill soon offered “YE OLDE LUMBER EXPERIENCE,” a three-night two-day package for \$1700 per person with accommodations at Ye Olde Sawmill’s Ye Olde Log Cabins, located about 100 yards up the hill from the mill. Danny timed the debut of Ye Olde Lumber Experience to coincide with hunting season, hoping some of

the many hunters who frequent the forests around Ye Olde Sawmill might purchase a Ye Olde Lumber Experience package while in the area.

After taking out a \$50,000 ad in the *New Yorker*, Ye Old Sawmill got its first three guests for the Experience – an engaged couple, Abby and Burt, and an entrepreneur named Chris, owner of the copper foundry that formed the industrial base of the nearby town of Benningshire. Each of the guests signed a Waiver, Release of Liability, and Assumption of Risk Agreement (reproduced in Fig. 2).

On the first day of the Experience, Abby, Burt, and Chris donned their prescribed costumes with bell-sleeved blousy shirts and big floppy shoes. They met on the mill floor.

Danny began the day's activities by cooking up a little practical joke designed to demonstrate some of the equipment.

"Abby, go ahead and press that red button on that panel over there. See that big red one there? That's right, go ahead and press it."

When Abby did so, Danny yelled, "No! Not that one!" as he simultaneously threw a switch activating a large and extremely loud saw at the other end of the mill. He screamed at Burt, "Get down! That saw blade is going to hit you! Duck!"

Burt frantically dove to the floor, grazing his head on a sharp metal table edge and knocking Chris's legs out from underneath him. Falling backward, Chris sharply hit his head on the stone floor.

## YE OLDE LUMBER EXPERIENCE

### WAIVER, RELEASE OF LIABILITY, AND ASSUMPTION OF RISK AGREEMENT

In consideration of permitting me to enroll in YE OLDE LUMBER EXPERIENCE, I, for myself, my personal representatives, heirs and next of kin, hereby acknowledge that YE OLDE LUMBER EXPERIENCE IS A POTENTIALLY DANGEROUS ACTIVITY and involves the RISK OF SERIOUS INJURY AND/OR DEATH AND/OR PROPERTY DAMAGE. I further acknowledge that working with antiquated fast-moving saws, conveyors, and other milling equipment involves certain risks and injuries that can occur which require treatment in a hospital or other facility, which may require a great distance of travel. I HEREBY RELEASE, WAIVE, DISCHARGE AND AGREE NOT TO SUE Ye Olde Sawmill, its parents, subsidiaries, affiliated entities, and any of their officers, representatives, directors, shareholders, instructors, agents or employees (the "Releasees") from all liability to myself, my personal representatives, assigns, heirs, and next of kin for any and all loss or damage, and any claim or demands therefor on account of injury to my person or property or resulting in my death, now and forever, arising out of or related to participation in said YE OLDE LUMBER EXPERIENCE, whether caused by the negligence, gross negligence, or wonton, willful or intentional conduct of the Releasees or otherwise. I HEREBY ASSUME FULL RESPONSIBILITY FOR ALL RISK of bodily injury, death or property damage, now and forever, arising out of or related to participation and/or instruction in said YE OLDE LUMBER EXPERIENCE, whether foreseen or unforeseen, and whether caused by the negligence, gross negligence, or wonton, willful or intentional conduct of the Releasees or otherwise. I have read this Waiver, Release of Liability, and Assumption of Risk agreement, fully understand its terms, understand that I have given up substantial rights by signing it, am aware of its legal consequences, and have signed it freely and voluntarily without any inducement, assurance, or guarantee being made to me and intend my signature to be a complete and unconditional release of all liability to the greatest extent allowed by law.

Signed \_\_\_\_\_ Date \_\_\_\_\_

**FIG 2. - The Waiver, Release of Liability, and Assumption of Risk Agreement signed by Abby, Burt, and Chris**

"I don't feel so good," Chris complained. "I feel a little woozy and nauseous. I think I might have a concussion."

Abby walked over to Chris. "I played ice hockey in college, and I know all about concussions. Let me see your head." Abby looked Chris over and stared into his pupils. "You're absolutely fine. Nothing to worry about."

"Okay," Chris said.

"Well, we need to move on," Danny said. "That was a little joke to keep you guys on your toes. You'll need to be aware and alert at all times. The sawmill is a dangerous place. Burt, I have to say, I'm disappointed in how you reacted. Instead of coldly analyzing whether there was any dangerous condition about, you reacted out of fear, cowardice, and panic. A true lumberjack would have done better. But let's turn our attention to the water-powered saws that we use to cut whole logs into rough-cut timbers. Now this is where we had some bad accidents in which some of our younger employees invented a game called 'lumber surfing.' They would ride the logs toward the saw blades and jump off at the last minute. It was great fun, but obviously, very dangerous. It's amazing no one died. Does anyone want to try?"

"I will!" shouted Burt, his ego bruised from being called out for his panicked reaction to the saw noise. Abby protested a little, but Burt was insistent. Mounting a rain-slicked log, Burt stood with his legs apart, braced himself, and looked around. Nothing seemed too insanely dangerous. As Burt would later establish to a jury's satisfaction at trial, if he had seen a flashing red light before the saw started up, he would have jumped off the log immediately. Flashing red lights have always rendered him paralyzed with fear since, when he was a boy, a convoy of fire trucks had run over his dog.

As Danny engaged the water-wheel transmission, the 60-inch rotary blades began turning, and soon spun up to full power. The conveyor engaged and steadily moved the log forward. As Danny cheered him on, Burt held steady. Even as the blades bit into the front end of the log, Burt kept riding. Abby, Chris, and Danny looked on in astonishment. With sawdust flying and the terrific noise of the blades cutting through the giant pine, Burt stayed on, shuffling backward as the blades ate up the log in front of him. Finally, as the last of the log was about to disappear into the whirling blades, Burt jumped to the left. But he didn't clear his feet. A spray of blood filled the air as Burt's feet went wide right, coming to rest on a pile of souvenir t-shirts, and Burt's body crumpled left to the floor.

Danny took command of the scene. "Chris, call 911 immediately!"



Chris merely looked at Danny blankly, yawned, and said, "Blow it out your ear, Danny. I'm really tired. I'm just going to lay down here and go to sleep."

"Good for you, Chris. You're quite a hero!" Danny screamed. "Abby, help me get Burt into my Suburban. I'll drive him to the hospital!" Within half a minute, Danny was driving off toward town, doing his best to get Burt to the hospital as soon as possible.

Back at the sawmill, the machinery, having not been shut off, continued to churn. Despite the noise, Chris took a nap under a nearby table, falling into a coma. Above him, the machinery jammed and buckled, allowing several logs to roll off the conveyors, punching through the mill wall, and crashing into the base of the IMAX theatre, which dislodged the geodesic theatre dome from its foundations. The dome, staying largely intact, rolled down the hill where it crushed to death three hunters who were walking across a section of Ye Olde Sawmill property by the creek.

Over the ensuing months, Burt learned to walk again, using prosthetic limbs. Abby sought treatment for post-traumatic stress disorder, needing prescription anti-depressants and sleep aids to get through her ordeal. The images of Burt's traumatic amputation played in her mind over and over. After 18 months, Chris finally awoke from his coma - but by then his business had closed. Close to 200 people had lost jobs in Chris's foundry, with 400 more in the town eventually unemployed because of the closing's extended economic impact.

FIG. 3 - First aid chart posted in various locations at Ye Olde Sawmill

| <h1>First Aid + for common sawmill injuries</h1> <p>from the New England Lumber Industry Association</p>   |  |  |
|--|--|--|
|  <p>NEVER touch an electric-shock victim until the source of the electricity has been identified and turned off, or until appropriate precautions have been taken</p> <p>Treatment:</p> <ul style="list-style-type: none"> <li>• Call 911</li> <li>• If not breathing, use CPR</li> <li>• If breathing, elevate feet and keep warm to avoid shock</li> </ul>  | <p>LYME DISEASE</p> <p>Caused by a bite from a deer tick</p> <p>Symptoms:</p> <ul style="list-style-type: none"> <li>• Red bull's-eye-shaped rash that increases in size daily</li> <li>• Dizziness</li> <li>• Chills</li> <li>• Fatigue</li> <li>• Fever</li> <li>• Muscle and joint aches</li> <li>• Severe headache</li> <li>• Stiff neck</li> <li>• Nausea</li> </ul> <p>Treatment:</p> <ul style="list-style-type: none"> <li>• If suspected, seek medical attention</li> </ul>   | <p>CONCUSSION</p> <p>Caused by a blow to the head</p> <p>Symptoms:</p> <ul style="list-style-type: none"> <li>• Dizziness</li> <li>• Severe headache</li> <li>• Nausea</li> <li>• Sudden urge to sleep</li> <li>• Increased size of one pupil</li> <li>• Agitation, restlessness, and irritability</li> </ul> <p>Treatment:</p> <ul style="list-style-type: none"> <li>• Monitor level of consciousness</li> <li>• Do not allow victim to fall asleep</li> <li>• Call 911 or take to ER</li> </ul> |
| <p>LOSS OF A BODY PART</p> <p>Treatment:</p> <ul style="list-style-type: none"> <li>• Call 911</li> <li>• Victim and extremity must get to hospital immediately</li> <li>• Apply pressure to wound with a clean cloth to staunch bleeding</li> <li>• Elevate area above heart level, if possible</li> <li>• Lay victim flat and keep warm to avoid shock</li> <li>• Wrap severed body part in clean cloth and place in plastic bag. Immerse in ice water. Keep body part as cool as possible.</li> <li>• Do not put body part directly on ice</li> </ul> | <p>ALCOHOL POISONING</p> <p>Symptoms:</p> <ul style="list-style-type: none"> <li>• Slurred speech</li> <li>• Stumbling, staggering</li> <li>• Violent behavior</li> <li>• Vomiting</li> <li>• Seizures</li> <li>• Unconsciousness</li> </ul> <p>Treatment:</p> <ul style="list-style-type: none"> <li>• Call 911</li> </ul> <p>While waiting for help:</p> <ul style="list-style-type: none"> <li>• Stay with the victim</li> <li>• Try to put victim to bed, propping on side to prevent aspiration in case of vomiting; check victim frequently</li> <li>• If coherent, try to get victim to drink sports beverages</li> </ul> | <div style="text-align: center;">  </div> <ul style="list-style-type: none"> <li>• Remain calm</li> <li>• Give precise locations</li> <li>• Describe nature of injury or emergency</li> <li>• Provide your name</li> <li>• Describe ages, genders and numbers of people involved</li> </ul> <p><b>For emergency dial</b></p> <h1 style="text-align: center;">911</h1>   |

**Examination Question:**

Analyze the potential claims and liabilities of the parties in tort.