
MIDTERM QUIZ - BLACKLETTER OVERVIEW

Closed-book. Half hour.

Write your name here: _____

All quiz materials (including this booklet and the answer sheet) must be turned in at the end of the half-hour period.

You will not receive credit unless you return this quiz booklet with your name written above.

This Part 1 of the quiz is the only part that will be graded.

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 from viewing materials other than your own.

Specific Notes and Instructions For PART ONE:

- a. Each correct answer is worth one point.
- b. This section of the examination is "closed book." You may not use any materials at all, other than writing instruments and the materials provided as part of the examination.
- c. Do not assume any additional facts not presented in the questions.
- d. Choose the most correct answer based on the materials assigned and presented in class. Each question has only one most correct answer. For example, where choices (a) through (d) are correct and choice (e) is "All of the above," the last choice (e) would be the most correct answer and the only answer that will be accepted. Where two or more choices are correct, the most correct answer is the answer that refers to each and every one of the correct choices.
- e. All exam materials, including this booklet, any scratch paper you use, and your answer sheet, must be turned in at the conclusion of the period for taking this Part One.

PART ONE

1. Though no one would suspect it, the shuttered aircraft maintenance hangar in the sleepy suburban community of Farapolis, Minnekota houses a test facility where Hexetron Systems, working under a Department of Defense contract, is developing a weather-control radar device. When operational, the system will, it is hoped, allow on-demand generation of powerful windstorms capable of destroying enemy installations without implicating U.S. involvement. The device uses an experimental nuclear fusion reactor to power a radio-frequency wave generator with a radiated power output equal to millions of TV-broadcast transmitters operating simultaneously. A full-scale test is undertaken, managed by a team of brilliant, well-trained, and well-rested engineers, all of whom diligently cross-check each other's work. All equipment is operated with several redundant safety systems, each of which far exceeds the state-of-the-art in all relevant industrial standards. Despite these precautions, during the test, a freak, undetectable wind-shear condition in the otherwise calm air over the test site deflects the generated energy beam back at the facility. The beam unevenly raises the temperature of the reactor containment vessel, which in turn causes a breach of the vessel wall, which then allows a plume of deadly radioactive material to escape. Earl, out jogging in a park three miles away, breathes in some of the radioactive particulate matter and suffers severe radiation poisoning as a result. He is given only months to live.

Which of the following is most accurate with regard to a possible lawsuit brought by Earl against Hexetron for personal injuries?

- (a) Earl has no claim because Hexetron did not owe him a duty of care.
 - (b) Earl has no claim because he cannot establish a relevant standard of care, since the technology is so new.
 - (c) Earl has no claim because he cannot establish a breach of the duty of care, since Hexetron took all due precautions and therefore did not act negligently.
 - (d) Earl has no claim because he cannot establish that Hexetron's actions were a proximate cause of his injuries.
 - (e) Earl has a claim.
2. Ajax enjoys frequenting the local Cut'n'Run convenience store. Never a paying customer, he goes only to terrorize the graveyard-shift clerk and otherwise make trouble. Which of the following sets of facts most clearly illustrates an actionable conversion?
- (a) Walking out of the Cut'n'Run store at 2 a.m., Ajax, angry that Cut'n'Run did not have the latest issue of Muscle'n'Tattoo Monthly to browse through, smashes his 40-ounce bottle of beer through the windshield of a parked Toyota Prius.
 - (b) Ajax spray paints his name in four-foot-high letters on the side of the Cut'n'Run.
 - (c) While a friend distracts the store clerk, Ajax removes Cut'n'Run's Slushee machine to use at a party, returning it to the alley behind the store the next day.
 - (d) Threatening to beat up the store clerk, Ajax reaches into the gumball jar, extracts a gumball, and tells the store clerk that the gumball represents the store clerk's head. Ajax then chews the gumball menacingly with his mouth open.
 - (e) Each day on his way to his buddy's house, nearly every day for an entire year, Ajax takes a shortcut by walking into the Cut'n'Run and exiting the store through a door marked "private - employees only."

[NOTE: QUESTIONS 3, 4, 6, 7, AND 9 REDACTED]

5. In which of these situations is Randall most clearly liable in negligence?
- (a) At half past midnight, hoping to impress his girlfriend who is waiting in a parked car, Jared hops a 10-foot chain-link fence onto Randall's property to pick some roses out of Randall's garden. Feeling his way through the darkness, Jared trips over a tangled clump of thick electrical cord and falls into a koi pond. The cord is more than 75 years old and has visibly broken insulation. When it contacts the water, the cord shoots 240 volts of alternating current into the pond and through Jared's body. Jared is unable to escape the pond as the electrical current locks his muscles in a continuous state of contraction. The electricity does not cut out, since Randall previously circumvented the circuit breakers to the garden outlets. Jared suffers severe, lasting, and permanent damage to multiple internal organs.
 - (b) Lord Marbury has accepted Randall's invitation for a game of croquet in the garden on a Sunday afternoon. While walking to the fourth wicket, Lord Marbury suddenly disappears through the ground in a spray of dust and mulched grass clippings. Peering through the resulting hole, Randall sees Lord Marbury 20 feet below, writhing in agony from two broken tibias, surrounded by rotting wooden wine barrels. "I'm so sorry!" Randall calls down to Marbury, "I had no idea!" Then Randall whispers to himself under his breath, "I should have inspected this property for abandoned underground wine cellars before inviting people to play on the lawn."
 - (c) Down below Randall's house and gardens, next to an elementary school, is an unimproved tract of land with a glen of trees in a steep ravine. As Randall knows, the creek at the bottom of the ravine is prone to flash flooding in winter. This is where Randall decides to stow his collection of 15-foot-tall statues of the Care Bears. Able to see a glimpse of Funshine Bear from the four-square courts, more than a dozen kindergartners climb on to Randall's property and down into the ravine, where a sudden deluge drowns three children and injures nine more.
 - (d) Following the injuries to Jared, Lord Marbury, and the kindergartners, Randall hires the very reputable Slayton Engineering Group to thoroughly investigate his entire estate for any hazards that might injure anyone. The firm gives Randall's property a clean bill of health. The next week, at the bed-and-breakfast that Randall operates on the far corner of his property, a just-married couple staying in the honeymoon suite is killed when carbon-dioxide from volcanic activity under the property (never previously known in the area) seeps out and smothers the newlyweds overnight.
 - (e) Extremely upset about the undiscovered volcanic-gas condition, Randall calls up Slayton Engineering Group and leaves a voice mail: "Could you please come out to the bed-and-breakfast and re-inspect that portion of the property as soon as possible? Thanks." While on site hours later, two SEG engineers are overcome by the gas and die.

[NOTE: QUESTIONS 3, 4, 6, 7, AND 9 REDACTED]

8. In which of the following situations is the defendant least likely to be found liable on a strict-liability basis?
- (a) Annabeth's polar bear escapes her basement and mauls to death her next-door neighbor.
 - (b) Bivens Air Services, while crop dusting a plot of corn on a vacant lot on the west side of downtown San Frangeles, accidentally douses a bicycle messenger with pesticide, causing acute pulmonary edema.
 - (c) While packing the parachute for first-time skydiver Cathy, Chuck's attention is diverted by a tense *American Idol* results show. As a consequence, Chuck crosses the shroud lines, the parachute malfunctions on deployment, and Cathy is rendered permanently paralyzed after hitting the ground at high speed.
 - (d) Reaching into the refrigerator at the Cut'n'Run convenience store, Donald grabs a bottle of cherry vanilla soda pop, which suddenly explodes, propelling a glass shard into Donald's left eye, puncturing his cornea and detaching more than half of the retina.
 - (e) Emily's prize-winning dairy cow, who has always been mild-mannered, leaves Emily's farm through a gap in a barbed-wire fence, then tumbles down an embankment and through the living-room window of a neighbor's home.

10. It is 5:45 p.m. on Friday at the University of Arkassippi's biosafety-level-4 laboratory for the study of hemorrhagic fevers. Karen, Sharon, and Suzanne have spent a long day working with samples of the newly discovered H9 strain of the Ebola virus. Communicating by intercom while working in their pressurized suits, the women hatch a plan to take a car trip to the big city of Nashlanta, five hours away, to check out a hot new night club, Sensations. Realizing they will have to hurry, the women move hastily through the decontamination procedures, skipping certain prescribed steps they consider redundant. They dart through the airlock, change into their clubbing clothes in the locker room, and hit the road. At Sensations, after several drinks, the women all descend on Tim, a handsome investment banker. Grabbing him to the dance floor, they all engage in dancing with Tim that involves very close body contact. Seven days later Tim is found dead in his kitchen, lying in a pool of his own blood and liquefied organs. Tests quickly determine Ebola-H9 to be the pathogenic cause of death. Expert testimony at trial establishes the following: The virus particles that transmitted the hemorrhagic fever are equally likely to have come from Karen, Sharon, or Suzanne; it is also possible that such particles came from some combination of the three women, but there is a 90-percent likelihood that only one of women transmitted the virus to Tim.

Which of the following is most accurate? (Note: "Plaintiffs," in the choices below, refers generally to parties with standing to sue, and includes any one or more parties entitled to bring suit because of Tim's injuries and death, including, without limitation, Tim's estate, survivors, parents, dependents, etc.)

- (a) Plaintiffs will be entitled to a judgment against Karen, Sharon, and Suzanne as jointly and severally liable.
- (b) Plaintiffs can make out a prima facie case establishing liability for Karen, Sharon, and Suzanne, shifting the burden of proof to each woman to disprove, by a preponderance of the evidence, that her actions were not a but-for cause of the transmission of the virus to Tim.

[NOTE: QUESTIONS 3, 4, 6, 7, AND 9 REDACTED]

- (c) Plaintiffs are not entitled to a judgment against any of Karen, Sharon, or Suzanne, since plaintiffs cannot establish that it is more likely than not the case that any particular defendant actually caused Tim's illness.
- (d) Plaintiffs probably cannot recover against any of Karen, Sharon, or Suzanne, since the women's allegedly negligent actions are unlikely to be found to be the proximate cause of Tim's death.
- (e) Plaintiffs can recover against each of Karen, Sharon, and Suzanne, since working with Ebola-H9 is an ultrahazardous activity.

THIS IS THE END OF PART ONE OF THE QUIZ.